

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 08-13555

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In the Matter of:

LEHMAN BROTHERS HOLDINGS, INC., et al.

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

October 16, 2008

11:19 AM

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

1
2 HEARING re Order Scheduling Initial Case Conference

3
4 HEARING re Debtors' Motion Pursuant to Rule 1015(b) of the
5 Federal Rules of Bankruptcy Procedure Requesting Joint
6 Administration of Chapter 11 Cases

7
8 HEARING re Motion for Order Pursuant to Section 105(a) of the
9 Bankruptcy Code Directing that Certain Orders and Other
10 Pleadings Entered or Filed in the Chapter 11 Cases of
11 Affiliated Debtors be Made Applicable to Recently Filed Cases

12
13 HEARING re Debtors' Application Pursuant to Sections 327(a) and
14 328(a) of the Bankruptcy Code for an Interim Order Authorizing
15 the Employment and Retention of Weil, Gotshal & Manges LLP as
16 Attorneys for the Debtors, Nunc Pro Tunc to the Commencement
17 Date

18
19 HEARING re Motion Pursuant to Sections 105(a) and 363(b) of the
20 Bankruptcy Code for an Interim Order Authorizing the Debtors to
21 (A) Retain Alvarez & Marsal North America, LLC to Provide the
22 Debtors a Chief Restructuring Officer and Additional Personnel;
23 (B) to Appoint the Chief Restructuring Officer Nunc Pro Tunc to
24 the Commencement Date; and (C) to Schedule a Final Hearing
25

1
2 HEARING re Debtors' Application Pursuant to Sections § 327(a)
3 and § 328(a) of the Bankruptcy Code for Authorization to Employ
4 and Retain Curtis, Mallet-Prevost, Colt & Mosle LLP as
5 Conflicts Counsel for the Debtors, Nunc Pro Tunc, to the Date
6 of its Engagement
7

8 HEARING re Motion of Shinsei Bank, Limited for the Entry of an
9 Order Approving Specified Information Blocking Procedures and
10 Permitting Trading of Claims Against the Debtor Upon
11 Establishment of a Screening Wall
12

13 HEARING re Motion of Metropolitan Life Insurance Company for
14 Entry of an Order Approving Specified Information Blocking
15 Procedures and Permitting Trading of Claims Against the
16 Debtor Upon Establishment of a Screening Wall
17

18 HEARING re Motion of AEGON USA Investment Management, LLC for
19 Entry of an Order Approving Specified Information Blocking
20 Procedures and Permitting Trading of Claims Against the Debtor
21 Upon Establishment of s Screening Wall
22
23
24
25

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2 HEARING re Debtors' Motion Pursuant to Sections 105(a) and 366
3 of the Bankruptcy Code to (i) Approve the Debtors' Proposed
4 Form of Adequate Assurance of Payment; (ii) Establish
5 Procedures for Resolving Objections by Utility Companies; and
6 (iii) Prohibit Utilities from Altering, Refusing, or
7 Discontinuing Service

8
9 HEARING re Motion for Relief from Stay for an Order Lifting or
10 Modifying the Automatic Stay filed by William Kuntz

11
12 HEARING re Amended Motion for Appointment of Equity committee

13
14 HEARING re Joint Motion of the Debtors and Barclays Capital Inc
15 for Entry of an Order Authorizing to File Under Seal Certain
16 Schedules to the Asset Purchase Agreement, dated September 29,
17 2008, with Exhibit A (Proposed Order)

18
19 HEARING re Motion of the Harbinger Funds for Leave to Conduct
20 Rule 2004 Discovery of Debtor Lehman Brothers Holdings Inc.

1
2 HEARING re Motion of Newport Global Opportunities Fund LP,
3 Newport Global Credit Fund (Master) L.P., PEP Credit Investor
4 L.P. and Providence TMT Special Situations Fund L.P. for Leave
5 to Conduct Rule 2004 Discovery of Debtor Lehman Brothers
6 Holdings Inc. and Other Entities

7
8 HEARING re LB R3 HOLDING SETTLEMENT & REDEMPTION TRANSACTION -
9 Debtors' Motion for Entry of Order Pursuant to Sections 105,
10 363, and 365 of the Bankruptcy Code and Federal Rules of
11 Bankruptcy Procedure 2002, 6004, 6006, and 9019 (i)
12 Approving Equity Interests Purchase Agreement; (ii) Authorizing
13 Debtors to Compromise, Settle, and Release Related Claims; and
14 (iii) Granting Certain Related Relief

15
16 HEARING re Eagle Energy Partners I L.P. Transaction - Debtors'
17 Motion for Entry of an Order Pursuant to Sections 363 and 365
18 of the Bankruptcy Code and Federal Rules of Bankruptcy
19 Procedure 6004, 6006 and 9019 Authorizing Lehman Brothers
20 Holdings Inc. to (A) Enter into a Partnership Interests
21 Purchase Agreement; (B) Compromise and Release a Portion of an
22 Intercompany Loan; and (C) Assign the Remainder of Such
23 Intercompany Loan to Purchasers

1
2 HEARING re Sale of Lehman's Investment Management Division
3 Transaction - Debtors' Motion to (A) Establish Sales
4 Procedures; (B) Approve a Seller Termination Fee and a
5 Reimbursement Amount; and (C) Approve the Sale of the Purchased
6 Assets and the Assumption and Assignment of Contracts Relating
7 to the Purchased Assets

8
9 HEARING re Debtors' Motion Pursuant to Sections 105(a), 345(b),
10 363(b), 363(c) and 364(a) of the Bankruptcy Code and Bankruptcy
11 Rules 6003 and 6004 (A) for Authorization to (i) Continue Using
12 Existing Centralized Cash Management System, as Modified; (ii)
13 Honor Certain Pre-petition Obligations Related to the Use of
14 the Cash Management System; and (iii) Maintain Existing Bank
15 Accounts and Business Forms; (B) for an Extension of Time
16 to Comply with Section 345(b) of the Bankruptcy Code, and (c)
17 to Schedule a Final Hearing

18
19 HEARING re Debtor's Motion for Order: (i) Authorizing Debtor to
20 Obtain Post-petition Financing Pursuant to Sections 363 and 364
21 of Bankruptcy Code; (ii) Granting Liens and Superpriority
22 Claims to Post-petition Lenders Pursuant to Section 364 of
23 Bankruptcy Code; and (iii) Scheduling Final Hearing

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P R O C E E D I N G S

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2 THE COURT: Please be seated. Mr. Miller, good
3 morning.

4 MR. MILLER: Good morning, Your Honor. Harvey Miller
5 with Weil Gotshal & Manges on behalf of the debtors. Once
6 again, Your Honor, this is the first omnibus hearing in this
7 case and we are now completing our fifth week of
8 administration. And once again, Your Honor, on behalf of all
9 parties involved, we appreciate the Court's efforts to
10 accommodate the needs of this epic saga and we recognize the
11 long journey Your Honor's had to get here today.

12 Your Honor, before we get into the agenda, it was my
13 understanding that Your Honor wanted to have a status
14 conference as to the state of the estate at this point.

15 THE COURT: Yes.

16 MR. MILLER: So if I may proceed with that, Your
17 Honor. And I thought, Your Honor, in the context of where we
18 are that some history has to be alluded to in connection with
19 the commencement of these Chapter 11 cases. And if I may, Your
20 Honor -- if I may approach, Your Honor, we've prepared an
21 organization chart of Lehman Brothers --

22 THE COURT: You may approach.

23 MR. MILLER: -- that may be of some help to you.

24 THE COURT: I'm interested in seeing it. Thank you.

25 MR. MILLER: And we have the copies for other

1 parties.

2 The chart, Your Honor, is a simplified version of the
3 Lehman Brothers Holdings, Inc. enterprise. And the entities
4 that are listed in red, Your Honor, are entities which are
5 currently under some type of judicial administration or
6 supervision, either an administration process in the U.K. or
7 receivership action in another foreign jurisdiction. And the
8 entities that are in the sort of purplish color, Your Honor,
9 are entities that were sold to Barclays as part of the Barclays
10 transaction. And that's the first page of the organization
11 chart, Your Honor. And I might say, Your Honor, this is an
12 attempt to consolidate almost 4,000 different entities. And
13 there are notes on the second page that related to each of the
14 entities. And the third page, Your Honor, is an organizational
15 chart which is directed to Lehman Brother's Inc. which is the
16 broker dealer.

17 So with that in reference, Your Honor, let me just
18 begin by saying that Lehman was a massive business with
19 consolidated assets of over six billion dollars and liabilities
20 of at least that amount. There was a global business that
21 operated on a twenty-four/seven basis with hundreds of
22 thousands of transactions occurring each day at the speed of
23 light moving billions of dollars. On a worldwide basis, Lehman
24 employed 25,163 employees on September 15, 2008, the date of
25 the commencement of these proceedings.

1 Bankruptcy was not in contemplation, Your Honor, of
2 the Lehman enterprise. However, the week of September 8th,
3 2008 was horrendous for Lehman exacerbated by contracting
4 liquidity as clearing banks demanding collateral security,
5 spreads widening, decreasing market capitalization, potential
6 downgrades and a crippling loss of confidence on the part of
7 Lehman account holders and counterparties. Nevertheless, it
8 was believed at that time, Your Honor, that a transaction with
9 the Bank of America or, alternatively, with Barclays would
10 occur. Unfortunately, the Bank of America went radio silent
11 during Saturday, September 13th. The proposed Barclays
12 transaction, Your Honor, collapsed during the morning of
13 September 14, 2008. But even at that point, there was
14 confidence that a transition process would evolve with the
15 assistance of the Federal Reserve or the U.S. Treasury that
16 would enable Lehman to continue and operate in the ordinary
17 course at least to close out the transactions and its business
18 in an orderly manner.

19 There was no substantive consideration of bankruptcy
20 as a Lehman option until the evening of Friday, September 12
21 and even at that time, it was considered a remote possibility.
22 The events of Sunday, September 14, 2008, were dramatic. They
23 involved negotiations with the Federal Reserve Bank of New
24 York, the Treasury and the SEC. It culminated in the rejection
25 by the Federal Reserve and the Treasury to provide -- let me

1 call it a bailout to Lehman. Indeed, it was recommended that
2 Lehman immediately convince its board of directors to authorize
3 the commencement of a Chapter 11 case. There was a decision, I
4 believe, that failed to realize the consequences of what would
5 occur. A decision that is comparable in its monumental lack of
6 foresight to the federal government's reaction to the Katrina
7 catastrophe. That is the way it will be recorded in the
8 history books because, like Churchill said, I may have to write
9 one of the books.

10 As the Court stated, Lehman Brothers became a victim,
11 in effect the only true icon to fall in the tsunami that had
12 befallen the credit markets. The board of directors met that
13 night and ultimately passed a resolution authorizing the
14 commencement of the voluntary Chapter 11 case by Lehman
15 Brothers Holdings Inc. that was filed on September 15 in the
16 wee hours of that morning.

17 There was no preplanning. The result was trauma and
18 dislocation as the shocks of bankruptcy caused the fourth
19 largest independent banker to suddenly stop operating in its
20 normal fashion. The LBHI Chapter 11 case was preceded by the
21 commencement of administration proceedings in the United
22 Kingdom of Lehman Brothers Inc. Europe. And the appointment of
23 members of PWC as the joint administrators for what I will
24 refer to, Your Honor, as LBIE. LBIE was the critical hub for
25 the European operations and an integral part of the worldwide

1 financial reporting system. There were approximately 5600
2 employees at LBI on September 15th. As a result of the
3 appointment of the administrators, there was a lockdown at LBIE
4 and the system stopped.

5 In the context of what happened on September 15th in
6 the morning, at 7 a.m. in the morning, negotiations resumed
7 with Barclays Capital Inc. in an effort to try and salvage
8 value, protect customers, and also to provide for the transfer
9 of customer accounts and provide employment and continue the
10 broker dealer business. Those negotiations which began at 7
11 a.m. on the 15th, Your Honor, ultimately evolved into the
12 creation of a structure that would accomplish those ends so
13 that there would be a sale to Barclays of certain assets and
14 there would be a companion proceeding initiated against Lehman
15 Brothers Inc., the broker dealer under the Securities Investor
16 Protection Act where a Securities Investor Protection Act
17 trustee would be appointed and we would coordinated the two
18 proceedings so as to effect a sale which resulted in the
19 hearings that occurred before Your Honor during the week of the
20 15th.

21 While this was happening, Your Honor, the foreign
22 proceedings in which administrators were appointed or judicial
23 supervision occurred caused a breakdown of the financial
24 reporting system both in the U.K. and in Asia. The immediate
25 need was for protection of the value of the assets. The

1 negotiation and execution of an asset purchase agreement
2 occurred on September 16, 2008. There were many moving parts
3 as circumstances and market conditions changed. The scene on
4 the 30th and 31st floors of 745 Seventh Avenue resembled bedlam
5 as hundreds of professionals converged and negotiated. The
6 businesses sold to Barclays consisted of the U.S. and Canadian
7 investment banking and capital markets businesses that
8 encompassed fixed income and equities cash trading business,
9 brokerage dealing, trading and advisory businesses, investment
10 banking operations, LBI's business as a future's commission
11 merchant, LBI's commodity's business, government securities
12 trading operations, mortgage banks securities trading
13 operations of LBI but not any securities of such nature held by
14 the seller except as otherwise specified in the asset purchase
15 agreement, the PIM, or private investment management business,
16 and the building at 745 Seventh Avenue and two data centers.

17 Consideration for the purchase price of the LBI
18 business was 250 million dollars representing the goodwill of
19 that business and 1,000,290,000 dollars to Lehman Brothers
20 Holdings Inc. for the other businesses sold and the real estate
21 known as 745 Seventh Avenue and the two data centers.

22 Purchased assets are defined in the asset purchase
23 agreement as (1)all of the assets of seller used primarily in
24 the business or necessary for the operation of the business in
25 each case excluding the excluded assets; (2)none of the assets

1 or subsidiaries of LBHI other than assets at LBI except as
2 otherwise specifically provided. There was also executed
3 thereafter, Your Honor, pursuant to the asset purchase
4 agreement, a transition services agreement which is dated as of
5 September 22, 2008. In that agreement, the purchase of
6 Barclays Capital agreed to extend to LBHI entities the use of
7 facilities and other assistance on a transitional basis as set
8 forth in that agreement which also imposed upon Lehman
9 reciprocal obligations and duties. The implementation of the
10 transition services agreement is a difficult process, Your
11 Honor, because of all of the things which have happened since
12 the commencement of this case. And there will be more about
13 that after, Your Honor.

14 Immediately prior to the commencement of the SIPA
15 proceeding, Your Honor, an agreement was reached to transfer
16 all of the LBI subsidiaries before the consummation of the
17 sale. This was consistent with the commencement of the
18 proceedings under the Securities Investor Protection Act of
19 1970 and the appointment of a SIPA trustee. This was part of
20 the coordination of keeping the business operating and trying
21 to preserve value, Your Honor. The transfer of the LBI
22 subsidiaries was for the purpose to enable the continued
23 efficient and expeditious administration of their businesses
24 with the cooperation of the SIPA trustee. And if Your Honor
25 will look at the third page of the organizational chart, all of

1 the entities on the first line starting with "Lehman Brothers
2 Derivative Products" across the line, all of those entities,
3 the stock was transferred to another Lehman Brothers entity,
4 Lehman Alley, and the consideration for the transfers was a
5 note issued to LBI by the LBHI subsidiaries to which the
6 subsidiaries were transferred. The note, which is a pick note,
7 "equals the fair market value of the LBI subsidiaries at the
8 time of transfer and would be determined by an independent
9 valuation to be completed by Lazard Ltd. pursuant to an agreed
10 upon methodology with the SIPA trustee. Pursuant to the note,
11 LBI will receive one hundred percent of the net cash proceeds
12 from the sale of assets of LBI subsidiaries as provided in the
13 note. The note bears interest at the rate of eight percent per
14 annum and is secured by the equity of those subsidiaries." And
15 that was all, Your Honor, negotiated with the SIPA trustee.

16 THE COURT: When was that done? When did that
17 happen?

18 MR. MILLER: Before the commencement of the SIPA
19 proceeding, Your Honor.

20 THE COURT: Immediately before.

21 MR. MILLER: Immediately before. That morning, as I
22 recall it, Your Honor. The SIPA proceeding, as I remember, was
23 about midday, 1:00 or thereabouts.

24 THE COURT: On the 19th.

25 MR. MILLER: On the 19th, Your Honor. The closing of

1 the Barclays sale, as Your Honor may vividly recall at about
2 12:30 a.m. in this courtroom, the sale was approved and
3 immediately thereafter, took about an hour to get the order
4 entered, immediately thereafter the closing transactions began.
5 And in that connection, I should note, Your Honor, that the
6 United States trustee appointed a creditors' committee on
7 September 17th. The committee immediately went into
8 organization and action and representatives of the committee,
9 their counsel and their financial advisors, Houlihan Lokey and
10 FDI, attended a good portion of the closing transactions which
11 began very early in the morning on the 20th of September. What
12 we contemplated would be a simple neat little closing turned
13 out to take two full days, Your Honor. And I found out when
14 you pick a time that you must close by, and someone said 7 a.m.
15 Monday morning before the markets opened, somehow the
16 transaction consumes all of the time. So from early morning on
17 Saturday the 20th without any break at all right through 7 a.m.
18 Monday morning, the closing transaction moved forward. And it
19 was effected, Your Honor, by the changing market conditions
20 which affected values and other difficulties which occurred in
21 connection with clearing transactions and in connection with
22 Depository Trust Company.

23 On Sunday afternoon, the 21st, Your Honor, there were
24 some serious difficulties. The Federal Reserve and the SEC and
25 other governmental agencies became involved. There were a

1 great many conferences to resolve differences with the clearing
2 agencies or clearing entities. And that was not cleared up,
3 Your Honor, until about 5 a.m. Monday morning. It was a very
4 difficult closing, Your Honor. We made it by 7 a.m. and the
5 transaction went forward. While all of this was going on, Your
6 Honor, more and more foreign proceedings were being instituted.
7 And Lehman's financial systems, Your Honor, worked perfectly
8 when the company was in operation. When the company stopped
9 operating, the systems became, to some extent, dysfunctional
10 because they were all integrated. And when the U.K. went down
11 you could not access those records and a lot of records there.
12 When Asia went down, the same thing happened. So the system,
13 in effect, disintegrated. And it's been difficult to reset the
14 system so that you can really get information the way Lehman
15 did when it was operating. And that has been a continuing
16 problem that we're working on.

17 THE COURT: This sounds like a prelude to your cash
18 management motion.

19 MR. MILLER: Yes, sir. It's involved in that. Now,
20 Your Honor, on the evening of September 14th, late in the
21 evening, I might say, it was clear that given what was
22 happening with people picking up their belongings and leaving
23 and great uncertainty as to what was going to happen with
24 Lehman and the entire enterprise, it was clear that there was a
25 need for a very experienced personnel to deal with the

1 bankruptcy issues, the turnaround issues, etcetera. And it was
2 at that point that the company selected Alvarez & Marsal to
3 function in that capacity and Mr. Brian Marsal, one of the co-
4 founders of Alvarez & Marsal, was selected to act as the chief
5 restructuring officer. And Mr. Marsal, Your Honor, is in court
6 today with us and other members of his team.

7 Starting on Monday morning, the Alvarez & Marsal team
8 came on in force to start to try and organize what I can only
9 describe, Your Honor, as what might have been called a chaotic
10 situation with a great deal of uncertainty as to what was the
11 effect of the filing of the Chapter 11 case. The role of
12 Alvarez & Marsal has been critical in bringing order to this
13 process, Your Honor. The collapse of the integrated financial
14 reporting systems has had enormous impact. Prior to the
15 Chapter 11, I mentioned the total number of employees, Your
16 Honor. Of that 25,160 employees 13,710 were residents in the
17 United States. 1100 employees had been terminated in the two
18 weeks preceding the commencement of the case. The current
19 state, as a result of the Barclays transaction, Your Honor,
20 approximately 9100 plus employees became employees of Barclays
21 Capital Inc. The IMD division, the investment management
22 division of Lehman employs approximately 1,912 employees. And
23 that, really, Your Honor, is almost like a separate unit. It
24 includes the Neuberger Berman entities and that Neuberger
25 entity enterprise was never totally integrated into the Lehman

1 enterprise. They had their own employees and so on.

2 Mortgage servicing had another 1,596 employees. And
3 what has happened since September 15th, Your Honor, is Barclays
4 has taken possession of 745 Seventh Avenue and it is now the
5 Barclays Capital building. About a week or ten days ago, the
6 Lehman -- I'll call it Lehman legacy -- moved out of the
7 building with the A&M team and moved to 1271 Avenue of the
8 Americas which was another Lehman office. Of the Lehman
9 employees that have not gone to work for Barclays and are now
10 working at Lehmans, the legacy company under the direction of
11 the CRO, now number 164 persons. And most of those persons,
12 Your Honor, are primarily legal and treasury.

13 One of the big difficulties, Your Honor, is that the
14 traders and others who were involved in the day to day business
15 of moving securities and so on are not employees of Lehman.
16 And this is a monumental task in connection with the resolution
17 of derivative transactions which are a very peculiar animal.

18 THE COURT: This raises a question in my mind as to
19 how Mr. Marsal and his colleagues are able to access
20 institutional knowledge. How do you do that?

21 MR. MILLER: I'm going to get there, Your Honor. I'm
22 going to get there.

23 THE COURT: Okay.

24 MR. MILLER: Okay? So what has happened, Your Honor,
25 is A&M has about a hundred to 125 people working with the

1 legacy people. The intention of Mr. Marsal is to recruit and
2 increase the workforce to approximately 450 people with the
3 bulk to be dedicated to derivatives, the bulk of the new
4 employees. The organization for the administration of the
5 Chapter 11 cases contemplates -- and what has been done is that
6 A&M employees have been divided into teams. There are, one, an
7 asset divestiture team. And this team is responsible for the
8 loan book, the derivatives book, private equity, proprietary
9 portfolio, overseas assets, domestic banks, real estate
10 portfolio, tax refunds and receivables, aircraft, hardware and
11 other. Then there is operational teams. And these operational
12 teams include the following: orders and claims, treasury and
13 accounting, wind-down transition, data preservation, forensic
14 review, IT interdependency. And there are various senior
15 people assigned to each of those teams, Your Honor. And one of
16 the first -- I'll get to this in just a minute, Your Honor.
17 The complexities of administration and enormous firefights that
18 have resulted, there are approximately 1.5 million derivative
19 transactions. In the U.S., over a million derivative
20 transactions involving approximately 8,000 counterparties.
21 Many of those counterparties, Your Honor, under their -- is the
22 agreements elected to create and elected to declare an event of
23 default, the event of default being the commencement of the
24 Chapter 11 case by LBHI as the guarantor of the transaction.
25 This, Your Honor, is, I think, is the International Swaps and

1 Derivatives Association.

2 THE COURT: I'm familiar with the term.

3 MR. MILLER: So that there was an event of default on
4 the 15th. Each one of the counterparties declared September
5 16th as the early termination date. And approximately 600 to
6 700,000 of those contracts, Your Honor, have been terminated.
7 And essentially, I might say, Your Honor, with the exception of
8 but a few, every movant for a Rule 2004 examinations is a
9 counterparty who terminated a Swap or other derivative
10 transaction. And in many of these cases, after the early
11 termination date, the counterparty has elected to value the
12 collateral that was posted with Lehman and come up either with,
13 in all of these cases, with a net claim against Lehman. In the
14 case, for example, like we used Harbinger for an example, Your
15 Honor. There were two transactions. They were liquidated out
16 and they ended up with net claims against Lehman.

17 Now, there's a question, Your Honor, as to the
18 valuation of the collateral which is something that will have
19 to be gone into later on in the administration of these cases.
20 The difficulties of administration, Your Honor, have been the
21 demands by individuals for specific information as to their
22 accounts. It's been complicated by the disintegration of the
23 systems. The stored data, Your Honor, and I am not an expert
24 on this stuff at all, are equal to two petabytes. I'm told
25 that's supposed to be very impressive.

1 THE COURT: I think that you've communicated
2 something that neither you understand nor I understand. So
3 it's not -- I gather it's a lot of data.

4 MR. MILLER: I'm told that, Your Honor.

5 THE COURT: Okay.

6 MR. MILLER: And over 2700 applications -- and Mr.
7 Marsal's team has told me there's no staple solution where you
8 just push a button and material comes out. There are literally
9 hundreds of inquiries and e-mails coming in on an hourly basis
10 over the first four weeks.

11 THE COURT: Well, let me stop you for a second --

12 MR. MILLER: Sure.

13 THE COURT: -- because I can't tell if I should be
14 very concerned about this report or comforted by this report.
15 Should I be comforted that Mr. Marsal has this massive hard-to-
16 manage pile of data under control? Or is it so massive that it
17 requires a tremendous amount of work in accordance with the
18 strategies and allocated personnel that you have described. I
19 can't tell whether this is a good report or negative report.

20 MR. MILLER: That's the climax, Your Honor. No.
21 This is a good report, Your Honor.

22 THE COURT: Oh, okay.

23 MR. MILLER: Okay? I may not be effective in
24 conveying that message but I hope we get there. What I'm
25 trying to say, Your Honor, is the first three weeks were really

1 difficult, very difficult. And I think we all owe a debt
2 gratitude to the effort which the Alvarez & Marsal team have
3 put in and the fact that all of these people have been working
4 around the clock to get control of this process. And we are
5 beginning to see -- we are now moving, Your Honor, from the
6 kingdom of perpetual darkness into the light.

7 THE COURT: It's a very vivid image. Let me go to
8 one point of light.

9 MR. MILLER: Sure.

10 THE COURT: And this is a comment which I'm going to
11 make in the context of the status report but it may foreshadow
12 some of the things coming up at me, a portion of the agenda
13 that involves contested motion practice. It's obvious that
14 there are any number of parties in interest who are
15 counterparties to swap transactions or entities that had prime
16 brokerage relationships with Lehman or other businesses that
17 have claims against Lehman that have expressed through the 2004
18 discovery which is before me a strong desire to get the facts
19 and if the facts aren't available through the debtors'
20 fiduciaries, they want the opportunity to pursue a 2004
21 discovery and get the answers themselves.

22 Are you able to tell me or is Mr. Marsal able to tell
23 me anything about his ability to respond within a particular
24 period of time to these reasonable information requests?

25 MR. MILLER: Yes, sir. What I'm trying to emphasize,

1 Your Honor, and what Mr. Marsal would emphasize if he were
2 standing in my place, is this is a really, an atypical case, a
3 case without any preplanning, a case which had a high level of
4 chaos the first week. Order is being obtained out of this
5 process, Your Honor. What we had tried to say to people
6 seeking information is give us an opportunity to put the
7 organization in place, to get the records, to get the
8 information that we can share with everybody. And we have been
9 sharing information, Your Honor, as we have been accumulating
10 it. Some of it is preliminary. But we've been sharing it with
11 the creditors' committee. Now, in a case of this size, Your
12 Honor, you can't have fifteen, twenty, thirty-five 2004
13 examinations.

14 THE COURT: Well, I don't want to --

15 MR. MILLER: Okay.

16 THE COURT: --convert this into --

17 MR. MILLER: All right. But I want to ask you a
18 question, Your Honor.

19 THE COURT: -- what amounts to a preview of that
20 argument unless it can be resolved in the context of what we're
21 now talking about. And I'm guessing it won't be. What I
22 really am looking for in the context of the status --

23 MR. MILLER: Yes, Your Honor. We --

24 THE COURT: -- conference portion of this
25 presentation is whether Mr. Marsal, and I'd be happy to hear

1 from him, is able to rationally predict when he and his staff
2 will have sufficient control over the data that would, perhaps
3 not with the ease of pushing a button but with some relative
4 ease, can respond to particularized requests for information.

5 MR. MILLER: Your Honor, as a matter of fact, we had
6 this discussion yesterday. We had a series of meetings
7 yesterday. And our best guestimate, and I'm calling it a
8 guestimate, Your Honor, is with all the efforts of the IT team
9 as put into place and we are negotiating protocols with the UK
10 administrators so that we can share information and, as Your
11 Honor knows, the Rule 2004 examination that the creditors'
12 committee special counsel wants to take, that's been continued
13 to November 5th because we're trying to work out a protocol on
14 that one. The estimate, Your Honor, and Mr. Marsal can speak
15 for himself, is that in forty-five to sixty days, we should be
16 in a position where we can answer specific inquiries. And
17 that's a goal, Your Honor. But again, using the type of
18 phrase, two petabytes, that's a lot of information that we have
19 to get. And the biggest issue here, Your Honor, is the
20 derivatives contracts. We have to know what's in the inventory
21 in derivative contracts. We have to know what is the value of
22 the collateral in connection with those. And there are a lot
23 of problems about valuation because the market was changing
24 every day. And the mark to market is not the easiest thing in
25 the world. And then to find out whether it's a net claim or we

1 have money owed to us. Now, we are having difficulty, Your
2 Honor, that everybody that owes us money is not too anxious to
3 pay. Everybody we owe money to is sending us wire
4 instructions. It's a little bit different depending what side
5 you're on.

6 But let me just tell you, there are four guiding
7 principles that have been adopted by the chief restructuring
8 officer and permeates the entire system. And one, Your Honor,
9 is preserve, capture and store key data such that we can
10 reconstruct transactions and events. Two, address immediate
11 buyers impacting asset values and claims. Three, identify and
12 retain teams to work the problems. Four, determine pre-
13 bankruptcy events giving rise to causes of action or mitigation
14 of claims.

15 Now, in the context of this emergency situation that
16 we've been working, Your Honor, the first three are the highest
17 priorities. And number one is the preservation of data. And
18 just yesterday, we had a meeting with Barclays Capital. We
19 have to implement a transition services agreement in a broader
20 scale, Your Honor, so that we can have access to systems that
21 are now under the control of Barclays. And that's a project.
22 But we made progress yesterday. All of these things are being
23 dealt with, Your Honor, on a daily basis. And as I said, the
24 conclusion was that in forty-five to sixty days, we will be
25 able to answer specific inquiries.

1 Now, in fact, one of the joinders to one of the
2 motions, we found out some information last night and told him
3 where his account was. Most of these accounts are one off swap
4 agreements, Your Honor. And the question is what happened in
5 the liquidation of the collateral relating to that swap
6 agreement. Now, that's a specific area -- I don't know how
7 that translates -- I don't want to argue the motion now -- how
8 that translates into this broad, broad discovery. But we're
9 cognizant of the issue. And we are -- Mr. Marsal is and his
10 team are working diligently to get to that position. There's a
11 whole team that is working on reconstructing -- I shouldn't say
12 reconstructing, resuscitating the systems. And there's going
13 to be a bankrupt data center for all of this. And that's not a
14 long time, forty-five to sixty days in a case of this size,
15 Your Honor. And as Your Honor knows, there has been --
16 additional Chapter 11 cases have been filed. There are now
17 seventeen debtors. Most of the derivative transactions, Your
18 Honor, not entirely all of them but most of them were with
19 Lehman Brothers Special Finance Inc. which was a debtor which
20 was filed on October 3. That particular entity, Your Honor,
21 was filed because one of the guiding principles was to preserve
22 value and protect the assets. So if there was an entity that
23 might be subject to attachment or it might be subject to
24 seizure of assets then the decision was made -- you have to
25 file that before something happens.

1 In other cases, where you could take action to
2 protect the assets before it dissipated such as, I will tell
3 you, the Indian back office processing center. Mr. Marsal and
4 his team got involved right away. It was a very difficult
5 situation. The employees there were forming their own group.
6 There were offers -- they were going to offer themselves to
7 another entity. They got involved right away and we did a
8 transaction where the purchase price is going to be seventy
9 million dollars, a good portion of which will go to LBHI.

10 So continuing through this effort, Your Honor, was
11 having to make a determination should a particular entity be
12 put into Chapter 11. And that resulted in the seventeen
13 entities that are now there.

14 THE COURT: Can you tell me whether or not with the
15 exception of those entities whose filings might be mandated by
16 a party to a transaction such as the proposed transaction for
17 IMD, are there any entities that are currently in the departure
18 lounge and ready to file that I should know about or that
19 you're prepared to publicly declare?

20 MR. MILLER: Not as of today, Your Honor. Most of
21 the protective actions have been done, unfortunately, Your
22 Honor, in the case of LBSF, the special financing entity, there
23 were monies on deposit in that bank, JPMorgan Chase was the
24 banker for that entity and there was a state court proceeding
25 in which the Bank of America was attempting to, in effect, get

1 an attachment on that account. And there was an order entered
2 in that proceeding, not quite a restraining order but leaving
3 the account undiminished. And under New York State law, the
4 bank decided it had a right to set off those accounts. And it
5 set off those accounts and we've reached an agreement with the
6 bank that it will hold those monies separate, not apply them
7 until there's a final accounting. That company, Your Honor,
8 had a relationship with Chase on a derivative transaction and
9 Chase is in the process of liquidating the collateral in the
10 account. It'll be settled someday. And either the 500 million
11 dollars in round figures that were in that account will be
12 applied to that deficit or it will be returned. So we have
13 that agreement in writing with the bank and the bank has been
14 very cooperative in that respect, Your Honor.

15 But, unfortunately, LBSF, Your Honor, has zero
16 dollars. And that was the counterparty to all these other
17 counterparties in these swap transactions. Then, of course,
18 LBHI is alleged to be the guarantor in relation to all those
19 swaps.

20 So the team that has been working is to preserve the
21 values, preserve the data, deal with the firefights and get an
22 organization stabilized. And the difference between September
23 16th, Your Honor, and Monday of this week is really dramatic.
24 We now have an organization which I would say is humming. They
25 know what they're objectives are. They're moving forward.

1 Information is being developed. We had a six and a half hour
2 meeting last week, Your Honor, with the creditors' meeting in
3 which there was good give and take, there's been a good
4 relationship with the creditors' committee.

5 This is not the typical Chapter 11 case, Your Honor,
6 where you have old management and a creditors' committee and
7 you're fighting for control. The management today is Mr.
8 Marsal who reports to the board of directors, Your Honor. And
9 the board of directors, I have to point out to Your Honor, has
10 ten members. Nine of them are independent, not employees of
11 Lehman. Nine independent directors. And Mr. Marsal I think
12 is -- he can speak for himself, Your Honor, has met with them,
13 I think, at least once every week. They're on top of the
14 situation. He reports to them. That's the only body he
15 reports to. He is technically -- I would say not even
16 technically, Your Honor. He is an independent impartial
17 objective administrator of this estate. And, I have to say
18 this again, he has brought order out of this chaos.

19 The difficulty, Your Honor, is that we now have a
20 small workforce, just 160 people, the A&M people and now we
21 have this attempt to go out and recruit people, 200 of whom,
22 Your Honor, we want to put into -- he wants to put into the
23 derivative section. That is the most complex. The rest of the
24 information is going to start coming in on a regular basis.
25 Maybe we will get to the point where you can press a button and

1 the information will come up. But we're not there yet.

2 So, since September 15th, Your Honor, we've done the
3 Barclays sale. We have on the calendar today the proposed sale
4 of the IMD division.

5 THE COURT: The procedures for that sale.

6 MR. MILLER: I'm sorry, Your Honor. To approve the
7 procedures for that sale. We have on the calendar for today
8 two proposed sales, one of Eagle Energy and the other one of
9 R3. And as I said, Your Honor, we have sold the back office
10 processing center in India to Nomura for a gross sales price of
11 seventy million dollars. And we are in the process of
12 establishing protocols with the PWC joint administrators, the
13 Japanese supervisors of that company. We have a protocol in
14 effect, an informal -- maybe we will reduce it to writing with
15 the SIPA trustee. We've worked very closely with the SIPA
16 trustee. And I would purport, Your Honor, that there is this
17 forensic unit which is going to turn its attention to a review
18 of all pre-Chapter 11 transactions. We have three grand jury
19 investigations, Eastern District of New York, Southern District
20 of New York and the District of New Jersey. A number of
21 people, I think the number is around twelve, Your Honor, have
22 already been subpoenaed to appear before those grand juries.
23 There's a state attorney general investigation. So there are
24 huge demands that are being made but they're being coped with,
25 Your Honor. They're being dealt with in seriatim. Information

1 is going out. A great deal of information, Your Honor, has
2 been furnished to the creditors' committee. It's been a very
3 active participant in that.

4 Currently now, Your Honor, the estates hold in excess
5 of three billion dollars. And I have to say, Your Honor, in
6 connection with some of the statements that were made at the
7 time of the filing of the Chapter 11 cases and in connection
8 with the Barclays sale, maybe people didn't realize this, Your
9 Honor, but Lehman operated basically under a very basic
10 corporate structure in U.S. businesses. You have Lehman
11 Brothers Holdings Inc. at the top as the holding company. And
12 basically, Your Honor, as the bank. So you had all these
13 entities. And every day cash was swept up to the holding
14 company. And in the morning, the holding company disbursed
15 cash as needed. Even though these were corporate entities, it
16 was basically operating -- I would have to say, Your Honor, it
17 was out trying on a preliminary basis almost as one ball of
18 wax. LBI was the major paymaster --

19 THE COURT: You don't really want to say that in this
20 hearing, do you?

21 MR. MILLER: I withdraw that, Your Honor. I said
22 it's a very preliminary matter, Your Honor. I don't know where
23 that's going to go. I really don't know. That's the
24 investigation --

25 THE COURT: Well, just for what it's worth, given

1 what you described as the chaotic circumstances surrounding the
2 filing and the fact that the chief restructuring officer is
3 only now in the process -- I'm not saying he's taking more time
4 than he should. It's a huge job -- but only now in the process
5 of developing the strategies for getting full control over the
6 business. I don't think on this record we should say anything
7 one way or the other that might be later quoted as a cause for
8 or against possible substantive consolidation. And I don't --

9 MR. MILLER: I don't mean to prejudge --

10 THE COURT: I don't know that you were making any
11 such suggestion. But it certainly caught my attention.

12 MR. MILLER: I would limit it, Your Honor, just to
13 the way cash was managed in the system. Most of the employees
14 were LBI employees. And most of them used to get their W-2s --

15 THE COURT: But you also have said pretty clearly in
16 the cash management motion that there were accounting entries
17 made reflecting the --

18 MR. MILLER: Yes.

19 THE COURT: -- debits and credits, those parties that
20 owed money, those parties that were entitled to money. And
21 that at the end of whatever period of sweeping and paying out
22 money, there was some appropriate reconciliation based upon
23 properly maintained books and records.

24 MR. MILLER: Absolutely, Your Honor.

25 THE COURT: That I don't view as apropos of a single

1 ball of wax. But it's your comment.

2 MR. MILLER: No. I --

3 THE COURT: And you're either stuck with it or you
4 can retract it. Up to you.

5 MR. MILLER: I take Your Honor's advice. I retract
6 it. And I would confirm, Your Honor, there were debits and
7 credits made and accounting systems were maintained to show
8 intercompany transactions. There's no doubt about that, Your
9 Honor. And --

10 THE COURT: What I understood you to be saying is
11 that for cash management purposes, and we're not talking about
12 that motion now, but there was a reference to -- it was either
13 LBHI or LBI -- I, frankly, don't recall which -- served as the
14 "paymaster" --

15 MR. MILLER: Yes.

16 THE COURT: -- with respect to the various payments
17 to be made on behalf of the enterprise. And if that's what
18 you're referencing, I accept that as not one ball of wax but
19 simply a cash management protocol.

20 MR. MILLER: That's what I was referencing, Your
21 Honor. But I would like to make just a comment, Your Honor,
22 because ever since the hearing on approving the sales
23 procedures in connection with Barclays, there's been a great to
24 do about the alleged 8.48 billion dollar alleged transfer on
25 the eve of bankruptcy from LBIE to LBHI which was referred to,

1 I think, in the declaration as one of the administrators of
2 LBIE. On a preliminary basis, Your Honor, there is no evidence
3 of any kind whatsoever that there was anything unusual or
4 outside the ordinary course of business --

5 THE COURT: But is there evidence that the eight
6 billion dollars was, in fact, transferred from London to New
7 York on September 12th?

8 MR. MILLER: No, Your Honor. No. The facts, as we
9 have them today, and, again, Your Honor, subject to
10 confirmation, is that LBIE is actually indebted to LBHI for
11 approximately eight billion dollars. And LBI, Lehman Brothers
12 Inc., is indebted to LBIE for approximately 3.4 billion
13 dollars. And if you netted those figures, there's still a net
14 payable from LBIE to LBHI. Now, you've got to put that in the
15 context, Your Honor, that in the regular course of conduct, the
16 sweeps did occur. And then the accounting entries were made.
17 Now, as I said before, Your Honor, on September 12th,
18 bankruptcy was not considered an option to Lehman. People were
19 still working and preparing for completion and settlement of
20 trades on Monday the 15th and also arranging for the transfer
21 of funds. That was stopped dead, Your Honor, on the 15 --
22 actually, on the 14th. LBI closed down, there was a lockdown
23 on all systems in London. Transactions that were supposed to
24 go forward on the 15th did not occur because of the bankruptcy,
25 Your Honor. Those trades were not concluded. Now, that's not

1 to say, Your Honor, that there was a bundle of money or a
2 bundle of securities that were going to move. Remember, this
3 is all electronic.

4 So there are a lot of transactions, Your Honor, I'm
5 sure that got caught in the filing and got caught in the
6 administration proceedings and got caught in the appointment of
7 judicial supervision in the other offices. And that's just
8 unfortunately, Your Honor, the consequences of a bankruptcy.
9 If there had been a bailout, that would not have occurred or
10 probably would not have occurred. But that's what happened,
11 Your Honor.

12 And there's been a lot of talk, Your Honor, about the
13 alleged 1.3 billion dollars that initially was supposed to
14 be -- I shouldn't say be but it was on a balance sheet for LBI
15 on September 16 -- or 15. And when we got to the actual Friday
16 when Your Honor approved the sale, the terms of the sale
17 changed and there was no cash going to Barclays. What had
18 happened there, and we alluded to it and maybe superficially at
19 the hearing, is on Wednesday night, the CME, the Chicago
20 Mercantile Exchange, closed out all of LBI's transactions. And
21 that cost about a billion two hundred thousand dollars of
22 posted margin. So that ate up almost all of that billion
23 three. The balance of the monies, I am told, Your Honor, and
24 again, this is all preliminary, was taken by Citibank in
25 connection with margin payments as the clearing bank for

1 commodities transactions. And all during that week, Your
2 Honor -- and that was a terrible week, the market was going
3 down, values were disappearing. And when we go to the closing,
4 there was no billion three hundred million dollars. The only
5 money at LBI, and the SIPA trustee can tell us that also, was
6 in the 15C3-3 account which was the reserve account for
7 protection of customers. And in that account, there was a
8 billion dollars in cash and there was 700 odd million dollars
9 in securities for customers. And then there was another
10 account for broker customers which had about 460 odd million
11 dollars in it. And as part of the Barclays closing, because
12 Barclays was taking the customer accounts, they got the 700 odd
13 million dollars in securities. The one billion dollars in cash
14 and the 400 odd billion dollars in securities is still in the
15 15C3-3 account and can't be released until the SEC authorizes a
16 release. And if it is released, it will go to the SIPA
17 trustee. So that's what happened to that money, Your Honor.

18 There are ongoing issues, Your Honor, with JPMorgan
19 Chase on reconciling the ultimate closeouts. That's a problem
20 for another day, Your Honor.

21 So, in conclusion on my status report, Your Honor,
22 let me say this. Maybe the word "chaos" was an extremely
23 emotional word. It was a difficult situation. None of the
24 employees anticipated that there would be a bankruptcy. There
25 was a lot of uncertainty. And in the period of, I would say,

1 Your Honor, less than four weeks, with the tremendous
2 contribution of Mr. Marsal and the A&M team, we now have a
3 functioning organization, an organization that is retrieving
4 information, putting it in proper form for distribution. We've
5 had a very active creditors' committee which has been extremely
6 helpful in getting this organization in shape so that we are
7 now moving into what I hope, Your Honor, is a return to
8 normality. Is it the end of abnormality? I can't say that,
9 Your Honor. But it is certainly the beginning of the end of
10 abnormality. We are moving in the right direction.

11 THE COURT: Well, you're talking about the beginning
12 of normality in a bankruptcy case.

13 MR. MILLER: Yes, sir.

14 THE COURT: Not the beginning of normality in the
15 sense of what this business was.

16 MR. MILLER: No, sir.

17 THE COURT: We're really talking about being able to
18 progress without the kinds of emergencies that characterize the
19 first thirty days of the bankruptcy.

20 MR. MILLER: Exactly, Your Honor. That's what
21 we're --

22 THE COURT: Okay. Fine.

23 MR. MILLER: We took your admonition on the 20th to
24 get this case into the normal Chapter 11 framework and that's
25 what we're working on.

1 THE COURT: Okay. I appreciate your report. I have
2 a question or two for you and I may have a very general
3 question for Mr. Marsal.

4 MR. MILLER: Sure.

5 THE COURT: The question for you, principally,
6 involves can you provide at this juncture any predictions of
7 coming attractions as to what you anticipate requiring of the
8 Court over the next sixty to ninety days or is this still a
9 case that is in a reactive mode?

10 MR. MILLER: Your Honor, we are moving, I believe,
11 and Mr. Marsal can confirm this, I hope, we are moving out of
12 the reactive process and that phase. And I believe we're
13 moving into a phase in which we are beginning to think
14 affirmatively in what will be the ultimate objective in these
15 Chapter 11 cases. Is it just going to be a wind down or is
16 there something -- some entity or groups of entities that may
17 be reorganized so that this process can be brought to an
18 earlier termination.

19 It is going to be a long process, Your Honor. What
20 is coming up in the immediate future, and I think is probably
21 the most critical thing we are facing right now, is the ability
22 to recruit qualified people who can assist in unwinding the
23 most difficult transactions that we have. And again, Your
24 Honor, I refer to the derivatives. I believe that the team and
25 the Lehman legacy people, they have the real estate situation

1 under control. They are beginning to get control of all of the
2 data. Yes, there are some assets that you might say are in the
3 danger situation. But every one of those assets has a team
4 that's focusing on it.

5 So coming up before Your Honor, I think very shortly,
6 will be a request for authority to put into place a recruitment
7 program to get qualified people. And the difficulty with that,
8 Your Honor, and we've discussed this at length with the
9 creditors' committee is to get the kind of people that are
10 needed with the expertise that is required in the Wall Street
11 community which I don't want to characterize it -- I'll
12 characterize it the way other people do as very high
13 compensation levels. A compensation that may have to be
14 offered is not the compensation you would normally find in a
15 Chapter 11 case. And that is the problem that we are trying to
16 deal with.

17 THE COURT: It sounds like a problem that may be as
18 much optical as it is anything else.

19 MR. MILLER: That's right. I can visualize, Your
20 Honor, the stories if we were to hire somebody at x amount of
21 dollars. But it may be expensive in the first instance but the
22 fruits of that employment will be many, many fold more than the
23 cost of employment. And what we're trying to do is work it out
24 with the creditors' committee. I think that's the first thing
25 that's going to come up before Your Honor.

1 THE COURT: All right.

2 MR. MILLER: Okay?

3 THE COURT: Anything else?

4 MR. MILLER: Not at this moment, Your Honor.

5 THE COURT: Okay.

6 MR. MILLER: Thank you.

7 THE COURT: The other question, which is really a
8 question for you and I'm going to ask this of Mr. Marsal, too,
9 there is an overriding theme in at least certain of the
10 objections that have been filed by the informal noteholders
11 group, certain of the 2004 requests and the term that seems to
12 appear repeatedly is "transparency". It's a term that I myself
13 used at the last omnibus hearing. I think I have heard you
14 say, although in not precisely a declarative sentence, that the
15 efforts currently underway by Mr. Marsal and his team from
16 Alvarez and Marsal are ultimately dedicated to the proposition
17 that this will be a transparent case in the sense that
18 individual creditors who have information requests will be able
19 to have those requests satisfied within a reasonable period of
20 time after making those requests. Am I right in drawing that
21 conclusion?

22 MR. MILLER: I will make it a simple declarative
23 sentence, Your Honor. Yes.

24 THE COURT: Okay. My question for Mr. Marsal will
25 then be how is he going to do that. When does he believe it's

1 going to happen? And what are the contingencies that we need
2 to be concerned about between now and whenever it does happen
3 that might impact the success of that venture?

4 MR. MARSAL: I'm sorry, Your Honor. Can you repeat
5 what you just asked me?

6 THE COURT: I absolutely can't. You're going to have
7 to remember it. Basically, how are you going to get this done,
8 when is it going to get done and what are the problems that you
9 foresee in getting it done?

10 MR. MARSAL: Well, Your Honor, let me just take a
11 second to explain to you when we came into the case, the first
12 order of business was to try and protect the data. In other
13 words, save the data so we can fight another day.

14 THE COURT: And when you use "data" in the context of
15 a business of this sort, you're really talking about the assets
16 because so much --

17 MR. MARSAL: Yes.

18 THE COURT: -- of what goes on in a business like
19 this is electronic transfer, correct?

20 MR. MARSAL: Correct. Transactions. Transactions.
21 Trades. Also capturing the e-mail of people, what did people
22 intend. So the first order of business was trying to capture
23 that data and protect the estate so that we can again
24 reconstruct what happened, who shot who.

25 Second order of business, because the nature of this

1 case -- there are two kinds of assets. There are financial
2 assets and there are human assets. The financial assets fall
3 into two categories: melting ice cubes, which have a very
4 short lifespan and have driven you crazy the last thirty days,
5 but if we don't deal with that then we lose whatever value
6 those melting ice cubes have. And then the second book of
7 assets are a liquid assets. And those assets will be dealt
8 with and are being dealt with in a more -- in a more
9 regularized fashion which we will be dealing with over the
10 coming months.

11 As far as the human side, this is -- the assets of
12 this business are two-footed. If we, knowing that this is a
13 wind down, if we do not move on those assets and dispose of
14 those assets or find a new location for those assets then we'll
15 not only find ourselves without a lot of the -- we'll find
16 ourselves with issues such as severance, such as the
17 dissipation of further value for the estate, but we'll also
18 lose the knowledge that we could have from those people.

19 In trying to solve the derivatives problem, we're
20 going to have to rely heavily upon the knowledge that's in the
21 Barclays -- that are with the people that are now at Barclays.
22 And that's where we met yesterday. We not only need the
23 technology but we need the cooperation of the people from
24 Barclays.

25 THE COURT: Does the transition services agreement,

1 as it's currently structured, give you comfort that you can
2 gain access to the people who know what you need to know?

3 MR. MARSAL: It's a difference of opinion on that,
4 Your Honor. We have struggled a bit at the outset. But I
5 believe that -- I believe that it is the intentions of Barclays
6 to help us on the technology side and on the people access
7 side. But I could very well be back to you in a couple of
8 weeks with a very different -- in terms of -- with a very
9 different position on that. It is essential that we get the
10 cooperation of Barclays on the DSA.

11 But to continue on, Your Honor, the third -- after we
12 address the melting ice cubes, if you would, the third order of
13 business is recruiting the team because we do have liquid
14 assets and we have massive claims. So we have to recruit the
15 team who are qualified to estimate the claims, strike the
16 deals, settle up the derivative contracts. That's what we're
17 doing now.

18 The fourth priority, and, believe me, I understand.
19 Anyone who's lost x millions of dollars comes in and says
20 where's my collateral, where's my cash. They've got a right to
21 that. They've got a right to ask that question and I empathize
22 with them. The difficulty with that is that the first day --
23 within the first week, Mr. Miller came to me and he asked me
24 about this eight billion dollars which was a boohaha. As he
25 said to me, the prime minister of the United Kingdom thinks

1 that we stole some money. President Sarkozy of France thinks
2 that we're bad people. Can you address this issue. Diverted
3 the activity from the other three priorities and focused the
4 team on trying to construct it. What we found, Your Honor,
5 there isn't anybody making off with the money. It's a cash
6 management system which, as Mr. Miller said, it provides cash
7 in the morning and it sweeps cash in the evening. At the end
8 of the day, LBI owed approximately 2.3 billion dollars to LBIE
9 on Friday, as a preliminary basis, I understand. But the U.S.
10 trading operation owed the European operation 2.3 billion
11 dollars. Had that payable been made, I mean, had that cash
12 been transferred -- keep in mind, Your Honor, it would have
13 been swept. It would have been swept. There would never be
14 cash in the European operation under the cash management
15 system. So the inference that there was no cash and there was
16 something nefarious is just wrong. In fact, it's silly. But
17 we invested a lot of time to determine that and that kind of
18 got diverted. So I went back to Mr. Miller and I said, really,
19 we can't be spending our time on this right now. We have too
20 many other fires.

21 The biggest problem I have right now, Your Honor, is
22 having the information. We're trying to reconstruct the
23 information. I can put a lot of people on this assignment and
24 have them sit there twiddling their thumbs. Until I get the
25 receiver at Pricewaterhouse, until I get SIPC, until I get

1 Barclays all cooperating so I have the data and I can start to
2 get through these transactions, I'm just wasting the estate's
3 money. Today, we are much closer to being in a position to do
4 that. We have six work streams, forensic work streams, each
5 led by a partner of Alvarez & Marsal trying to -- in one work
6 stream would involve, for example, intercompany accounts.
7 Another work stream is dealing with the actual transactions
8 which occurred from September 1st through the filing date.
9 Another work stream is dealing with preferences. Another work
10 stream is dealing, again, with the preservation of the data
11 issues. All that's moving forward. And I'd like to satisfy
12 all 8,000 requests that I may have, or how many requests that I
13 have, but I sort of figure everybody has a right to the same
14 thing at the same time. And so what we're trying to do is to
15 position this thing so we can begin to respond to those
16 requests, all of which are fair. And, Your Honor, I think in
17 forty-five to sixty days, we'll be well along. But I'm sure
18 there'll be people who will say why aren't you addressing my
19 requests because we have so many.

20 THE COURT: Well, from what you've said, it sounds to
21 me that the greatest imponderable here may be the alignment of
22 the different parties who need to cooperate in order to get you
23 the access to data that you need and presumably the access to
24 individuals who can interpret the data. Is that correct?

25 MR. MARSAL: That's correct, Your Honor.

1 THE COURT: What's the process for solving that
2 problem?

3 MR. MARSAL: Well, the parties who are -- I mean, the
4 key parties to this is the TSA agreement with Barclays. We met
5 with the highest level of Barclays yesterday to have a very
6 frank conversation with some of the issues that we had. And I
7 believe we made a lot of progress yesterday. I think what --
8 the intentions at a senior level have not filtered down to the
9 more junior people within the organization and I was assured
10 yesterday that's going to happen. But without their
11 cooperation, we're in a lot of trouble. And even more
12 important than the retention agreement -- the recruiting motion
13 that will be coming down the pipe is that we need to get the
14 cooperation of Barclays. And then I need to get the
15 cooperation, which we met the day before, with the
16 Pricewaterhouse receiver. So if we have Pricewaterhouse
17 receiver and we have Barclays, we'll be well on our way to
18 being able to do this. Without their cooperation, we're in
19 trouble.

20 THE COURT: So your forty-five to sixty day time
21 estimate is an estimate which assumes that at some point early
22 within that time horizon, you're able to gain the cooperation
23 presumably by consent because you're not going to be doing it
24 any other way with the other parties in interest here that need
25 to work together for this to be a successful enterprise,

1 correct?

2 MR. MARSAL: Exactly. For us to answer your question
3 of what happened to a transaction, we need those other two
4 parties -- in most instances, those two parties -- to
5 cooperate. In all instances, we need Barclays' cooperation.

6 MR. MILLER: And as Mr. Marsal pointed out, Your
7 Honor, we met with one of the U.K. administrators the day
8 before yesterday. We met with Barclays yesterday. There's a
9 team working in London. Initially, we were denied access to
10 the London headquarters. We now have access to the quarters.
11 So progress is being made. And I would ask Mr. Marsal, is it
12 your intention that this be a transparent proceeding?

13 MR. MARSAL: Absolutely. This is an entity which is
14 in a wind down.

15 THE COURT: Okay, fine. That's very helpful. Thank
16 you. I have one more question for Mr. Miller.

17 MR. MILLER: Yes, sir.

18 THE COURT: It's obvious that this is a global
19 business, and by my count, and I may be missing an important
20 item, there are four principal insolvency proceedings that are
21 occurring concurrently. There's the LBHI bankruptcy case
22 together with its affiliated entities. There's the LBI SIPA
23 proceeding. The U.K. insolvency of LBIE and the Asian
24 insolvency proceeding involving the acquisition of various
25 assets by Nomura --

1 MR. MILLER: Correct, Your Honor.

2 THE COURT: Is there --

3 MR. MILLER: There's one other, Your Honor.

4 THE COURT: What's the one I'm missing?

5 MR. MILLER: The Swiss company, Your Honor. The
6 Swiss Federal Loan Bank Commission is basically taking control
7 of that entity, LBSSA.

8 THE COURT: Okay. I have a -- call it a cross-border
9 or global insolvency question. Is there a coordination of
10 these various proceedings so as to minimize the risk of cases
11 that are running at cross purposes and is there some group of
12 people who is in charge to the extent that's possible of
13 coordinating this global insolvency?

14 MR. MILLER: I would answer that question, Your
15 Honor, with a broad yes. The main concern is really LBIE which
16 is a critical part of the Lehman operation. And as Mr. Marsal
17 alluded to, we met with Mr. George Jacobs at PWC on Tuesday.
18 It is our intention to negotiate a protocol to share
19 information. It will be reciprocal. They need information
20 from us and we want information from them. And it was an
21 encouraging meeting. There are attorneys in London. There's
22 an A&M team in London that are working with the PWC
23 administrators. The Asian, Your Honor, is not as critical and
24 there are people working -- I know out of my Hong Kong office
25 that are working with the judicial supervisors in the Asian

1 cases. So it's all being administered and it all comes back,
2 Your Honor. And there are weekly meetings, almost daily
3 meetings with Mr. Marsal where each of these are reviewed. And
4 the attempts to get protocols really started about six days ago
5 when we finally got our arms around everything, got settled
6 into 1271.

7 So, yes, everybody recognizes it's a global business.
8 And everybody's trying to point out that there is a need for
9 reciprocity. As Mr. Marsal points out, the biggest one is the
10 implementation of the transition services agreement. And I
11 think he's absolutely right. At the highest levels of
12 Barclays, there is every statement of cooperation. It's when
13 you get down to the lower levels. And it's a simple process,
14 Your Honor. A former Lehman employee who was probably involved
15 in the trading operation, when you want to have access to that
16 person, you talk to that person without castigating in any way
17 the attitude on Wall Street, that person is likely to say look,
18 that's my past life. I'm finished with that book. I'm worried
19 about my future. I've got a job here and I want to do well at
20 this job. So it's getting those people getting instructions
21 from high on saying you have to do that. And every
22 encouragement was given to Mr. Marsal in the meeting we had
23 yesterday.

24 THE COURT: Okay. Fine.

25 MR. MILLER: Thank you, Your Honor.

1 THE COURT: Thank you for that report.

2 MR. MILLER: As I understand, Your Honor wants a
3 status report from the SIPA trustee and then we'll go to the
4 agenda?

5 THE COURT: Yes.

6 MR. KOBAK: And, Your Honor, if we may, the trustee
7 himself is prepared to give that report.

8 THE COURT: That's fine. Good afternoon.

9 MR. GIDDENS: Thank you, Your Honor. James Giddens.
10 What I said earlier at the time of our appointment in the
11 lengthy hearing was that there had been extraordinary
12 cooperation among various regulatory agencies. That has
13 continued. It's also continued with most of the parties in the
14 case. And many of the same issues Mr. Miller alluded to affect
15 us.

16 I should say that the restructuring, I think, in the
17 end will be beneficial to all the creditors. That is, the
18 transfer of most of virtually all of the subsidiaries of the
19 broker dealer to the holding company in return for which the
20 holding company received a note as to what the value will be is
21 structurally beneficial. The SIPA proceeding requires that the
22 broker dealer be liquidated. And therefore, what we're left
23 with is really a rather clean entity dealing with the
24 securities transactions and the issues that are peculiar to a
25 SIPC proceeding.

1 In a global sense, what we have accomplished, which
2 is really one of the mandates of the SIPA statute, is the
3 transfer of customer accounts to other broker dealers. We've
4 transferred 135,000 customer accounts and approximately 140
5 billion dollars of collateral and property in those accounts
6 which belongs to them to either Barclays or to Broadridge
7 Clearing, which is a Neuberger Berman entity. That's taken an
8 extraordinary effort that's been our primary focus. And that's
9 consistent with the SIPA statute which states that with the
10 approval of SIPC supervision of the SEC, you can hire
11 professionals to begin immediately that process. We retained
12 the firm of Deloitte & Touche who are highly skilled in broker
13 dealer operations. And they are really our only employees. We
14 are also in the process of trying to hire competent individuals
15 to complete the other parts of this proceeding. As I say, the
16 most significant achievement, and nothing like it's ever
17 happened in the securities industry, is literally in a matter
18 of weeks to transfer out 140 billion dollars of property and
19 135,000 customer accounts. Those individuals have access to
20 their accounts and they have not been harmed except by the
21 market. But the purpose of the statute and that part of it has
22 worked very well.

23 We have faced extraordinary difficulties in the same
24 sense. The day that the Lehman SIPA proceeding was filed
25 Lehman was -- the former Lehman operational personnel were

1 denied access to any of the information they would ordinarily
2 have relating to something like 300,000 transactions a day.
3 We've had to work painfully to restore that access. With the
4 clearing banks and the Depository Trust Corporation. This is
5 not meant to be a criticism of anyone. I think the dice were
6 thrown on this proceeding and people simply did not foresee how
7 complicated, protracted and sort of painful the process would
8 be. We have --

9 THE COURT: The dice were thrown?

10 MR. GIDDENS: Well --

11 THE COURT: I'm just trying to understand what you
12 mean by that.

13 MR. GIDDENS: I meant the decision -- I think the
14 decision Mr. Miller --

15 THE COURT: The decision to allow Lehman to fail?

16 MR. GIDDENS: Yes. Yes. I think -- that may be an
17 improper metaphor but all I'm saying is that I think regulators
18 and others involved could not foresee some of the consequences
19 and complications of allowing the fourth largest global firm to
20 fail.

21 So we have made progress in gaining access to
22 information which is absolutely essential to telling people
23 what is in their accounts and to dealing with other issues.
24 There are approximately 630,000 accounts at the broker dealer.
25 As I say, the restructuring operations that they've gone

1 through has isolated the broker dealer which have substantially
2 less assets than it had on its balance sheets, say, in May
3 2008. However, that allows us to focus on resolving these
4 customer claims. As I say, there are about 630,000 claims or
5 customers who will have claims. Many of those will be
6 satisfied in full and they will have no claim against the
7 estate. But there are 300,000 failed transactions, very
8 complex financial transactions which will result probably in
9 billions of dollars of claims against the estate. In terms of
10 available assets, the asset purchase agreement contemplated
11 that the broker dealer would receive 250 million dollars. That
12 was changed in the wee hours of Sunday morning to which we
13 agreed that money had to be pledged to DTC to collateralize
14 clearing obligations. Billions of dollars of Lehman
15 obligations are cleared through DTC or were on a daily basis.
16 So, on a pro forma basis where we were supposed to have 300
17 million in cash, we, in fact, were reduced to perhaps fifty
18 million in cash. You're also faced with the fact that there
19 are hundreds of banking relationships throughout the world
20 where most of these banks assert that they are secured
21 creditors that are also involved in transactions with Lehmans
22 and they imposed administrative holds on access to cash
23 including what we view as customer cash.

24 So, as I say, many of these problems are difficult
25 and they are being worked through. I think fortunately with

1 the cooperation of everyone involved, including clearing banks
2 and DTC, we've been able to achieve something significant in
3 transferring the customer accounts. We still have prime
4 brokerage accounts who were not acquired by Barclays and the
5 prime brokerage accounts are, principally, hedge funds with
6 very complex and differing strategies.

7 We have issued a protocol in accordance with SIPC's
8 approval and in consultation with the SEC, which tries to
9 devise a process by which those accounts could be transferred
10 out which is novel in a SIPC proceeding. Anyone always has a
11 right to assert their right to assert a claim under SIPA and to
12 go through that process. That is likely to be a protracted
13 process. We have already moved, I believe, some 900 million
14 dollars worth of prime brokerage property and we've moved --
15 accounts. We have contacted all of the -- or are in the
16 process of contacting and talking directly to the, I think, 365
17 separate hedge funds. These are very, very complex. It's
18 complex in part because many of them also have positions with
19 the U.K. administrator as to which we do not have at this time
20 information and jurisdiction. And I should say in that regard
21 we, too, will be meeting with the U.K. administrator and we
22 have proposed, along with Mr. Miller, that we all work out a
23 protocol of some of the models which have been adopted in other
24 cross-border cases in the Southern District.

25 As I say, we are beginning to -- the next big phase

1 after we finish transferring what we can will be the claims
2 process and the analysis of 600,000 claims and the number which
3 may be contested, all of which will have a right to come to
4 court, will present very, very significant issues as to how you
5 handle and how we can handle that in some kind of efficient
6 process.

7 We are -- as I say, part of our process has been to
8 try to coordinate fully not only with the regulators and we've
9 had an enormous cooperation from the SEC in Washington and New
10 York and the Federal Reserve, the CFTC and others but we also
11 have a weekly meeting with the holding company to talk about
12 mutual issues and the like. And we have Deloitte also
13 beginning the process of preserving information. Just to
14 highlight this, we were told that Lehman has something like
15 2,170 different computer programs for different kind of
16 information, all of which has to be understood and, again, it's
17 going to take time to do all this. We, too, as I say, are
18 willing to share information with anyone. I think mostly what
19 we need and the staff needs is time to -- probably a month or
20 two months to complete the transfers of accounts which is a
21 primary purpose of the SIPA proceeding.

22 So I think we made significant progress. But I do
23 think there will be a long complicated process in sorting out,
24 for example, what are the claims from the 300,000 failed
25 transactions which involve repos, stock loans, etcetera. Thank

1 you.

2 THE COURT: One question for you. When you talked
3 about a cross-border protocol of the type that is frequently
4 entered into, I'm not sure that there is a protocol that's
5 precedent for this kind of situation. If you're aware of one,
6 you can tell me, but I don't think there is one. Is it
7 contemplated that there'll be some effort to come up with a
8 cross-border netting arrangement in which parties who dealt
9 with Lehman as a single enterprise are able to or claim the
10 right to net across borders?

11 MR. GIDDENS: Yes. That certainly would be
12 objective. I should comment that one of the difficulties here
13 is there is a 180 degree approach under the U.K. and our
14 system. Our system emphasizes returning cash and securities to
15 customers as quickly as possible. The U.K. procedures, which
16 they've announced, is not that. It's a process of allowing
17 people to see how things shake out what the assets are in
18 allowing them to file claims. So that's creates -- whether
19 that can be properly meshed in or not, I don't know. But we're
20 also meeting with the U.K. administrator and his counsel today.
21 And clearly, out of fairness to any claimant, they should
22 have -- there should be some kind of process that metes out
23 what the claims should be. As to how that will work out, I
24 don't know.

25 THE COURT: Thank you, Mr. Giddens.

1 MR. GIDDENS: Mr. Caputo from SIPC is available to
2 make a few comments if you'd like to hear from him.

3 THE COURT: Only if he'd like to make them.

4 MR. CAPUTO: Good afternoon, Your Honor.

5 THE COURT: Good afternoon.

6 MR. CAPUTO: Just a few brief comments that I think
7 will help the Court get a fuller picture of where we are and
8 what we've done so far and what we anticipate coming down the
9 pike. Throughout the process, we have continued to coordinate
10 our activities with a host of agencies and regulatory bodies
11 including the Securities and Exchange Commission, the Fed, the
12 New York Fed, CFTS, FINRA and DTC and we thank them for their
13 cooperation. But we meet with them and I think it's important
14 the Court know that we meet with them almost daily, sometimes
15 multiple time a day we have conversations with these entities
16 in order to coordinate some of these protocols that are being
17 issued and some of these -- getting over some of the more
18 difficult issues. We've acted as a facilitator of transfer of
19 information, both receiving it in and providing it out, to all
20 of those agencies and the White House. The transfer of
21 accounts was a significant achievement in the case because it
22 allowed these 140,000 customers access to their property which
23 they have. So they are, in effect, for the most part out of
24 the process and hopefully in full possession of the property
25 that they seek. Now, they may have claims and they may have

1 damage claims that they can assert against the estates and we
2 will -- that will remain to be seen. But for the most part,
3 the achievement of getting 140,000 customers out with the 140
4 some odd billion dollars was tremendous and took a tremendous
5 amount of attention.

6 There were a number of things, as Mr. Miller alluded
7 to, their transactions caught in the filing, Mr. Giddens
8 mentioned 300,000 failed. Certainly, that presents a huge
9 problem to sort out. There were transfers of accounts through
10 a process called the ACATS transfer system which is run by the
11 NSCC which is a division of DTC. And there are about 16,000
12 ACATS transactions in the system. And the normal process of an
13 ACATS transfer, as I am told by DTC, takes about two to three
14 weeks. If a customer goes into a broker dealer and wants to
15 transfer their account, it takes about two to three weeks to
16 move that in the ordinary course of business. Here, you had
17 about 16,000 of them and the system simply cratered and could
18 not be dealt with at that point. But that is currently being
19 worked out through the efforts of Mr. Miller's estate, the SIPA
20 estate, DTC and the others who come into play. The protocols
21 that have been developed, again, have been done wiht the
22 assistance of everybody. It does not preclude anyone from
23 filing a claim. And the process that we envision going forward
24 will make that very clear to customers that they can afford
25 themselves the opportunity to file a claim for damages if they

1 believe they have any. The protocols really afford them an
2 opportunity to get access to their property in a much more
3 expeditious manner which we think is the focus of the case.

4 We have -- in the past, SIPC has drafted and we have
5 effected a memorandum of understanding with our British
6 counterparts. We have contacted them and caused that to take
7 effect. Hopefully, that will help in the development of an
8 international protocol here. We've been in communication with
9 them. And we will of course be assisting with the
10 communication with the LBIE representatives at Pricewaterhouse
11 and their counsel.

12 So the coordination proceeding is ongoing. The only
13 other thing that I would mention is coming down the road, what
14 we envision is the -- what we would call the housekeeping
15 papers will be brought before the court very soon. That will
16 be asking the Court by motion to approve the process to notice
17 the proceeding in newspapers all across the country and
18 internationally and to mail claim forms to customers, all
19 630,000 customers as well as general creditors. This is all
20 envisioned and provided for specifically under SIPA. We intend
21 to carry that out in the near term. And I believe we're
22 seeking to have a notification date -- notice date, excuse me,
23 and a mailing date so that there's some change, but roughly
24 around December 1st. So we think we'll be getting off the mark
25 very quickly in terms of getting people an opportunity to file

1 a claim with the SIPA trustee for anything that they have.

2 One final point. I think it's important that people
3 understand that SIPC doesn't hold, possess or have at this
4 point anything in this case. We are simply a facilitator of
5 information. We provide access to data where we can use our
6 offices to do so. But we are not in custody or control of any
7 of the data or any of the property. And we get numerous
8 inquiries about that issue about why isn't SIPC doing -- giving
9 up the access to the property or something along those lines.
10 Mr. Marsal even stated that contact with SIPC was potentially a
11 problem.

12 And I just want to stress to the Court that we have
13 been there -- there has been a SIPC person in New York,
14 multiple people in New York, every single day since even before
15 this case began. And they are there today working on this
16 case. I myself have been in New York, as this Court well
17 knows, every week since the process began. And we intend to
18 act as a facilitator. We've worked hard hours to do that. And
19 we do not stand in the way. But there are many, many rough
20 patches to get over and we're -- I think it's fair to say that
21 I agree with Mr. Miller and Mr. Giddens that we are moving from
22 the reactionary phase of this case into one where we can be
23 more proactive. And a good example of that is the motion for
24 the housekeeping which will allow for the claims process to
25 ensue.

1 THE COURT: Fine. Thank you, Mr. Caputo.

2 MR. CAPUTO: Thank you, Your Honor.

3 THE COURT: Mr. Miller, it's now almost a quarter to
4 one. My suggestion is that we proceed with everything on the
5 agenda that's uncontested and hopefully that won't take a
6 tremendous amount of time. We'll then see where we are in
7 terms of a best estimate as to how much time is likely to be
8 required for the contested matters. If, as I'm surmising that
9 that's a substantial amount of time, we may want to take a
10 break for lunch after you deal with the uncontested items.

11 MR. MILLER: Thank you, Your Honor. Your Honor, I
12 should have mentioned one other thing in the status report. On
13 September 17th, Your Honor did approve on an interim basis,
14 debtor-in-possession financing under Section 364 and it was
15 originally scheduled for today a hearing for final order. The
16 debtor-in-possession financing, we drew down 200 million
17 dollars of the revolving credit facility. That has been repaid
18 and the motion has been withdrawn, Your Honor.

19 THE COURT: And has the debtor, and I presume this is
20 Mr. Marsal's business judgment, concluded that there's no need
21 for DIP financing in the case and there's no foreseeable need
22 for future financing.

23 MR. MILLER: That is correct, Your Honor. And I
24 alluded to, Your Honor, the committee's 2004 motion has been
25 adjourned to November 5th.

1 THE COURT: Let me, just because this housekeeping
2 item came up, ask the committee to comment on something. There
3 is pending a matter which has been adjourned to November 5,
4 where the committee was seeking reconsideration of certain
5 aspects of the interim DIP facility if I remember correctly.
6 Is that mooted out by virtue of what's happened or is there an
7 issue with respect to the interim DIP order that I'm going to
8 need to revisit on November 5?

9 MR. DUNNE: Your Honor, Dennis Dunne of Milbank,
10 Tweed on behalf of the official creditors committee. The short
11 answer is it is not mooted out yet. There are discussions with
12 Barclays with respect to some of the fees that are arguably
13 were approved by Your Honor on an interim basis and whether
14 those fees were triggered or not as a result of the termination
15 that --

16 THE COURT: Have those fees been paid?

17 MR. MILLER: Excuse me, Your Honor. The fees in
18 connection with the interim were paid, Your Honor. What Mr.
19 Dune is precluding to is what I call loosely a prepayment
20 premium. And there is a dispute over that.

21 THE COURT: No reason to deal with that until
22 November 5. I just wanted to know if it was still a live
23 grenade the way it is.

24 MR. MILLER: It is under discussion, Your Honor.

25 THE COURT: Fine.

1 MR. MILLER: It has been the subject of discussion.

2 Your Honor, on housekeeping motions. There is a
3 motion that agenda Item I, Item 2, Docket Number 3, 831, Joint
4 Administration Motion for the Chapter 11 cases that were filed
5 on October 3 and on October 5, Your Honor. There is no
6 opposition for that.

7 THE COURT: That motion is granted.

8 MR. MILLER: The second item, Your Honor, is agenda
9 Number I, Item 3, All orders motion. This is a request by the
10 debtors, Your Honor, to apply certain orders entered in these
11 cases and the first day affidavit to the cases discussed --
12 that were filed on October 3 and October 5th and the
13 application itemizes the particular orders, Your Honor.

14 THE COURT: That's fine. That's consistent with
15 similar orders entered earlier during the administration of
16 these cases and I will grant that as well.

17 MR. MILLER: Thank you, Your Honor.

18 Next, Your Honor, and I probably if I might group
19 these three together. These are motions, Your Honor, by the
20 debtors to approve retention engagement of my firm as general
21 counsel, Curtis, Mallet as conflict's counsel and to engage
22 Alvarez and Marsal. These are for interim orders, Your Honor.
23 They will be heard again on November 5th. They have been
24 reviewed with the U.S. trustee. There are amplifications and
25 other materials that have to be furnished between now and the

1 5th and we would ask Your Honor to approve the interim order.

2 THE COURT: I'm prepared to do that but let me just
3 ask the U.S. trustee's comments with respect to these. Mr.
4 Valez-Rivera?

5 MR. VELEZ-RIVERA: Good morning, Your Honor. My
6 office did meet with both the proposed professionals for the
7 debtors and the committee separately earlier this week. We had
8 a productive meeting in terms of exchanging what our concerns
9 were with respect to the draft applications, with respect to
10 the committee and the filed versions for the debtors. The
11 professionals have our concerns in terms of future disclosures.
12 We expect that amendments will be filed. My office will review
13 them. In the meantime we will reserve our rights. That's
14 where we are.

15 THE COURT: You have no objection to the entry of the
16 interims, I take it.

17 MR. VELEZ-RIVERA: No, Your Honor.

18 THE COURT: Fine.

19 MR. VELEZ-RIVERA: Thank you.

20 THE COURT: I approve each of these three retentions
21 for the debtor.

22 MR. MILLER: Thank you, Your Honor. There is agenda
23 I, Item 10, the Debtors' utility motion, Your Honor. I don't
24 believe that there is any opposition to that. There are
25 arrangements that have been made and are in process with ConEd

1 and AT&T. I don't believe there's an objection. Am I right on
2 that?

3 THE COURT: I think there was one objection by AT&T?

4 MR. LUCAS: Your Honor, there was -- this is John
5 Lucas, Your Honor. There was objection by AT&T however it's
6 been since resolved. AT&T requested that if we were going to
7 supplement the utility schedule in the future, that such newly
8 added utility services would be provided notice. The order's
9 been changed to reflect that so that it would serve the revised
10 schedule on such party and they would have ten days to respond
11 and that we'd try to work out something --

12 THE COURT: Okay. So that's resolved.

13 MR. MILLER: That bring us, Your Honor, to contested
14 motions but there are some contested --

15 THE COURT: Why don't we just make clear that I'm
16 also approving the utilities motion --

17 MR. MILLER: I'm sorry.

18 THE COURT: -- so that for record purposes, that item
19 is taken care of. I approve that.

20 MR. MILLER: Your Honor, there are three motions to
21 approve trade screening procedures for committee members:
22 Shinsei Bank, Metropolitan Life and AEGON USA. There are no
23 opposition to those motions, Your Honor. That's agenda I,
24 numbers 7, 8, and 9.

25 THE COURT: Those motions were brought by committee

1 members. I view Mr. Miller in a role now of Master of
2 Ceremonies with respect to at least three --

3 MR. MILLER: I belong to equity, Your Honor.

4 THE COURT: Is there an attorney representing the
5 movant or the movants so that I can say that I have reviewed
6 the motion, because I have, and I find no problem with it and
7 I'm prepared to approve it. But I think we should at least do
8 this with the movant party being represented.

9 MR. KLEINER: Good afternoon, Your Honor, Dov Kleiner
10 from Vinson & Elkins for Shinsei Bank. I can only speak for
11 one of the movants but we filed the motion that's on -- the
12 agenda item is number 7 -- requesting approval of trading
13 procedures orders and screening procedures.

14 THE COURT: The motion's granted.

15 MS. MAUTNER: Good morning, Your Honor, Erin Mautner,
16 Bingham McCutchen on behalf of Metropolitan Life Insurance
17 Company. Our motion is motion number 8 on the agenda. We
18 would ask that Your Honor enter the relief requested unless you
19 have any questions.

20 THE COURT: I have no questions. I grant that as
21 well.

22 MS. MAUTNER: Thank you, Your Honor.

23 MR. VENDITTO: Good afternoon, Your Honor, Michael
24 Venditto from Reed Smith on behalf of AEGON, the movant, with
25 respect to agenda item number 9. We've negotiated the terms of

1 the order with the Office of the U.S. Trustee and the debtor,
2 and I believe it's substantially similar to the language you
3 approved for the other two.

4 THE COURT: That's approved as well.

5 MR. VENDITTO: Thank you, Your Honor.

6 MR. MILLER: I'm going to resume my role, Your Honor.

7 THE COURT: What role were you in Hamasmore (ph.)?

8 MR. MILLER: I was going to wear a tuxedo, but I
9 try -- no. There are some other matters, Your Honor, which I
10 think are now in the process of being uncontested. If Your
11 Honor would like to hear those: R3 and Eagle Energy.

12 UNIDENTIFIED MALE SPEAKER: No, just R3.

13 MR. MILLER: R3?

14 UNIDENTIFIED MALE SPEAKER: Just R3.

15 THE COURT: Anything that's uncontested I'm prepared
16 to hear right now.

17 MR. MILLER: And that is -- I'll just get the item
18 number, Your Honor. Okay, Your Honor. There's some language
19 that has to be added and the committee would like to have the
20 opportunity to reconsider then. So I withdraw those remarks.

21 It's ten to 1, Your Honor. I don't think some of
22 these motions would take a lot of time.

23 THE COURT: Let's continue.

24 MR. MILLER: Could we take, Your Honor, the motion to
25 lift the automatic stay by Mr. Kuntz. That's agenda II, number

1 1.

2 MR. KUNTZ: Your Honor, in light of the large crowd
3 here, I'd submit my motion on papers. I'm sure Mr. Miller has
4 some copies --

5 THE COURT: Are you Mr. Kuntz?

6 MR. MILLER: Are you Mr. Kuntz?

7 MR. KUNTZ: Yes, I am, Mr. Miller, as you recall.

8 MR. MILLER: You've changed a lot since 1975. I'm
9 sorry, Your Honor.

10 THE COURT: Was that picked up on the record, I hope?

11 MR. MILLER: Mr. Kuntz and I met a long time ago in
12 the --

13 THE COURT: I noticed that in the affidavit that he
14 filed.

15 MR. MILLER: -- WC grand case. If Mr. Kuntz wants to
16 submit other papers, Your Honor, I have no comments to lay on
17 it. They're all in the papers.

18 THE COURT: Fine. So they're sitting on the papers.
19 Now, as far as the papers in opposition, are you prepared to
20 rely on the papers as well?

21 MR. WILSON: Yes, Your Honor.

22 THE COURT: Well, based upon my review of Mr. Kuntz's
23 affidavit and the papers filed both by the debtor and by the
24 creditors' committee, which I have reviewed, in opposition to
25 the motion freely from automatic stay I've concluded that Mr.

1 Kuntz has failed to make out a case that sets forth cause for
2 relief from the stay and indeed, based upon my review of the
3 Sonax factors which is the leading case in the Second Circuit
4 dealing with the grant of stay relief, I find that Mr. Kuntz
5 has not made out a case under any of those factors.

6 Additionally, and I mean no disrespect to Mr. Kuntz
7 in saying this, based upon my review of his motion and
8 supporting affidavit and of the papers in opposition, it
9 appears that Mr. Kuntz is principally complaining about certain
10 matters arising out of a series of bankruptcies affecting the
11 Grand Union Company, the most recent of which I think was in
12 New Jersey before Judge Winfield. The circumstances of those
13 cases are known to me only from the papers since I was not, at
14 the time when I was in practice, involved in those cases.
15 However, based upon my review of Mr. Kuntz's motion and
16 affidavit, it appears that at best he is one of the perhaps
17 hundreds of thousands of creditors of this estate who has a
18 claim, potentially, against the Lehman estate. And it's not
19 clear to me from his papers that he actually has such a claim.
20 If he has such a claim, presumably it will be asserted when
21 proofs of claim are solicited and filed and will be dealt with
22 in the ordinary course as a claim to either be allowed or
23 objected to or dealt with in whatever way claims of that type
24 of dealt with.

25 But I'd like it to be clearly noted for record

1 purposes that at this stage of this massively complicated
2 bankruptcy case, it would be administratively burdensome for
3 parties who are unable to make an absolutely compelling case
4 that they're entitled to stay relief to be able to proceed
5 against the debtor. I'm particularly persuaded by comments
6 made by Mr. Marsal during his informal presentation which I
7 treat as the equivalent of testimony under oath, although he
8 wasn't sworn, that he is in the midst of a truly heroic effort
9 to marshal the data, work across borders with other parties
10 who are working in parallel proceedings and working with
11 Barclays in an effort to develop the transparency that in
12 direct response to Mr. Miller's question, is his goal.

13 It seems to me that Mr. Kuntz, at some point in the
14 future, in a manner no different from other parties in
15 interest, may be in a position to make further inquiry of the
16 debtor concerning his particular issue involving these Grand
17 Union notes and at least get an answer to his question. But
18 his question doesn't go to the front of the line simply because
19 he filed a motion for stay relief. This is a matter that
20 presumably will be handled along with the many other claims of
21 equal merit or greater merit.

22 For the reasons that I have expressed, the motion for
23 relief from automatic stay, filed by William Kuntz, is denied.

24 MR. MILLER: The rest of the calendar, Your Honor,
25 with the exception of R3 -- we may come back after the lunch

1 break and say that's noncontested -- are all contested issues.
2 So unless Your Honor wants to take maybe the equity committee
3 motion and deal with that before lunch.

4 THE COURT: Well, if counsel for the proponent of the
5 equity committee motion is prepared to proceed, why don't we do
6 that? I think that makes sense because the more we can do
7 before -- there are so many people in this room and in other
8 rooms, that one of my concerns is just crowd control. Because
9 as we take a break there's going to be a big crowd waiting at
10 the elevators and it's going to take some time for us to both
11 empty out the rooms and to fill them up later. So why don't we
12 take this in turn?

13 MR. WILSON: Good morning, Your Honor. My name is
14 Mat Wilson. I'm an attorney in Atlanta, Georgia, and I'm here
15 on behalf of Gregory Georgas who is a shareholder of Lehman
16 Brothers Holding. Your Honor, we have made a motion for the
17 appointment of an official equity committee. I believe that
18 the law in this matter is relatively straightforward. This is
19 a matter we're submitting to the discretion of the Court. It's
20 a matter on de novo review from the trustee's denial or refusal
21 to permit. I agree, Your Honor, with the arguments of the
22 opponents of this motion that the --

23 THE COURT: It sounds like it's over.

24 MR. WILSON: Just, Your Honor, as perhaps in the
25 debates last night, I agree that it's a rare exception and

1 reserved for extraordinary cases. Your Honor, I respectively
2 submit that this is precisely the type of an extraordinary
3 case. Everything we have heard about this case, the market
4 conditions, the proceedings to date, Your Honor has himself,
5 today, I believe, used the word extraordinary, as have some of
6 the other attorneys who have addressed you.

7 The question is one of adequate representation. The
8 factors, which are nonexclusive, first are the number of
9 shareholders, huge number of shareholders in this case. I
10 believe the number of shareholders is a factor that all of the
11 opponents would concede to the movant.

12 The second, Your Honor, is the complexity of the
13 case. Your Honor, I believe, moments ago commented that this
14 is a massively complex case. I believe that is a point which
15 all parties will concede.

16 The next question is the question of solvency versus
17 insolvency. Solvency, Your Honor, starts with a balance sheet
18 test. The May 31st balance sheet of the debtor demonstrated
19 twenty-six plus billion dollars of equity. The balance sheet
20 as of the end of August, six weeks ago, according to the
21 debtor's news report press release filed days before the
22 bankruptcy at a time when the debtor, according to debtor's
23 counsel, was striving to avoid bankruptcy and wasn't even
24 considering bankruptcy, reported twenty-eight plus billion
25 dollars of shareholder's equity.

1 An examination of that equity, when one examines the
2 assets and liabilities, those numbers are confirmed in both the
3 filing docket number 1 and in the affidavit of the chief
4 financial officer, docket number 2 in this case. The nature of
5 the business of Lehman Brothers is that of a bank. Lehman
6 Brothers has never reported operating losses. The net loss it
7 reported in its press release was as a result of a write-down
8 of portfolio. And even with that paper write-down, still left
9 twenty-eight plus billion dollars of equity. There's been
10 positive cash flow throughout the history or the most recent
11 history, with the exception of the credit crisis where
12 counterparties changed the terms, refused to trade, refused to
13 participate. All of those are market events, events in the
14 marketplace which are unprecedented, which address this issue
15 of extraordinary circumstances.

16 THE COURT: But you can't ignore those market events.

17 MR. WILSON: Absolutely not, Your Honor. And I'm
18 simply addressing the factors which address, one way or the
19 other, which Your Honor should consider in the exercise of his
20 discretion.

21 Similarly, the contra factor, Your Honor. The only
22 counter factor that has been raised, really, is that the stock
23 has traded low, the debt of Lehman has traded very low. But I
24 point out, Your Honor, that the stock has traded, is trading
25 above zeros. That bonds and debt trade at a discount for every

1 company that enters bankruptcy because of factors such as time
2 delay, the uncertainty associated with bankruptcy, the
3 fiduciaries that cannot hold bankrupt securities and therefore
4 are forced to sell, and the risk and uncertainty that is
5 associated with bankruptcy proceedings.

6 And, Your Honor, respectfully, I think that, frankly,
7 is compounded by the typical bleak and opaque nature of
8 bankruptcies. It's wonderful to hear Your Honor talk about a
9 notion of transparency in these cases. I believe that's a
10 laudable goal in all of these cases. And I respectfully
11 submit, Your Honor, that an equity committee can contribute to
12 that effort.

13 The final issue, Your Honor, is whether the cost of a
14 committee significantly outweighs the concerns for adequate
15 representation. In this case the costs would be relatively low
16 compared to twenty-eight billion dollars worth of equity and
17 that is a matter, the cost of the committee is a matter as to
18 which the Court retains jurisdiction with the employment of
19 counsel and the employment of financial advisors,

20 Your Honor, for all of these reasons, we respectfully
21 ask the Court to exercise its discretion and appoint an equity
22 committee in this case. Thank you.

23 THE COURT: Thank you. This motion is opposed. I
24 should hear from your adversaries on this.

25 MR. MILLER: Your Honor, please, on behalf of the

1 debtors. Your Honor, as counsel has pointed out, a motion for
2 the appointment of the equity committee, particularly after
3 rejection by the Office of the U.S. Trustee, is addressed to
4 the discretion of the Court.

5 Counsel has made a doggone good argument about
6 solvency. I wish the twenty-nine million dollars popped up --
7 billion dollars popped up someplace. There was a CVS auction,
8 Your Honor, involving Lehman last week, in which Lehman debt
9 was valued at less than nine dollars. I think it was \$8.32.
10 Certainly, the market is taking into account what has happened
11 to Lehman. And to come to the conclusion that today, October
12 16, Lehman is solvent, Your Honor, is a far stretch.

13 I would submit to Your Honor that the number of
14 stockholders in this particular case is not a significant
15 factor. The question is one of adequate representation. And
16 as I pointed out before, Your Honor, we have a board of
17 directors with nine independent directors. At least for this
18 time being, Your Honor, the adequate representation of
19 stockholders is vested in the board of directors. The board of
20 directors is aware of their fiduciary responsibilities. They
21 are acting, they are active, they are meeting with Mr. Marsal.
22 And until something in that respect changes, I would submit to
23 Your Honor that there is adequate representation. I believe
24 the motion is premature. I believe it should be denied without
25 prejudice, Your Honor.

1 THE COURT: Mr. Dunne?

2 MR. DUNNE: Thank you, Your Honor. For the most
3 part, we're going to rest on our papers. And I echo Mr.
4 Miller's comments. I'd like to just focus on two points
5 briefly. I want to underscore what this motion is not about,
6 first of all. It's not about the ability of any stockholder to
7 come in as a party in interest in this case and be heard. It's
8 also not about their ability to create an ad hoc committee, ala
9 the noteholder ad hoc committee that we have here and come in
10 and weigh in on any issue of the case.

11 What it's about is who pays their fees if they're
12 wrong on all their allegations of solvency. Because,
13 presumably, if they were correct in their assertions and
14 through their efforts they proved solvency, creditors were paid
15 in full in cash or otherwise, they would probably have a pretty
16 good claim for a substantial contribution award. What is
17 effectuated by their relief is imposing the administrative
18 burdens on the estate in the event --

19 THE COURT: That's not necessarily true, but I
20 understand the import of your argument. It is possible for an
21 equity committee to be appointed with the proviso that it will
22 earn no fees except on the basis of substantial contribution.
23 So it's not, per se, required that a committee be a committee
24 entitled to professional compensation under the standards of
25 the Code other than substantial contribution.

1 MR. DUNNE: All right. And I'm just addressing that
2 part just to get across that they have other recourse and
3 avenues for payment.

4 THE COURT: I understand that fully.

5 MR. DUNNE: And then to get to the issue with respect
6 to why it's just not appropriate, we address that in the
7 pleadings. I also want to focus on the fact that our interests
8 are long. The creditors' committee here is charged with, and
9 is in fact doing a job of ensuring that we maximize the value
10 of the assets as well as contain the claims. And this isn't a
11 case where we're likely at the end of this Chapter 11 going to
12 be in evaluation over what the standalone reorganization
13 securities of reorganized Lehman are going to be worth. We've
14 sold the North American broker dealer operations for cash.
15 We're in the process of selling Neuberger Berman for cash.

16 At the end of the day, we're going to have a pile of
17 cash and we're going to have a universe of claims. Either
18 those assets exceed that or not. We don't think it's credible
19 to imply that we're not motivated to get as much dollars as we
20 can out of those assets. Frankly, we don't know what the
21 universe of unsecured claims will be in this case. Probably
22 we'll not know for months if not years. And in the interim we
23 are monetizing very important assets of the estate. And the
24 creditors' committee has a fiduciary duty to do that.

25 So there's no benefit to what we see to have an

1 additional layer of an official committee and the attendant
2 expenses that go with that. And with that, Your Honor, unless
3 you have questions, I'll rest.

4 THE COURT: No questions. Mr. Velez-Rivera?

5 MR. VELEZ-RIVERA: Your Honor, Mr. Dunne relied
6 partly on his papers. We are relying entirely on our papers.
7 And unless you have any further questions of us, we submit to
8 your discretion.

9 THE COURT: Fine. I've reviewed all the papers. And
10 I'm not persuaded by the movant that this is a case that, at
11 least at this point, calls for the appointment of a committee
12 of equity security holders. Notwithstanding the fact that it
13 is a case, and I'll use counsel's term, that is massively
14 complex and a case the involves a great number of shareholders.
15 That alone does not provide much support for a committee in a
16 case that manifestly, at this juncture, does not appear to
17 reflect any value in the equity securities.

18 The papers filed by the creditors' committee, as I
19 recall, included some powerful references to what has been
20 going on in the market for a distressed Lehman bonds. That was
21 all -- appears to be congruent with the result mentioned by Mr.
22 Miller of the recent CVS auction.

23 I'm not concluding that the trading value of these
24 securities in an unregulated market constitutes proof of
25 anything other than what the market is currently judging these

1 assets to be worth. But because the trading market has
2 declared, whether correctly or incorrectly, that the senior
3 indebtedness of Lehman can only trade now at a very deep
4 discount from par, tells me that whatever positive value may be
5 in the stock that remains is more in the nature of a hope and a
6 prayer and certainly not a reflection of fair value.

7 Additionally, I am persuaded that under the
8 circumstances of this case, as articulated by Mr. Miller,
9 equity holders are adequately represented now without a
10 committee. They are represented by the activities of the
11 debtor-in-possession seeking to maximize value and by the
12 activities of the creditors' committee working in cooperation
13 with the debtor and working for their constituency, also
14 seeking to maximize value.

15 No particular purpose would be served at this
16 juncture in appointing another official committee. The U.S.
17 trustee has considered this and this is truly a sweet spot for
18 the U.S. trustee's office, the determination of whether a
19 committee should be formed and the composition of such a
20 committee. And the U.S. trustee has concluded that no
21 committee is appropriate here for equity security holders.
22 That conclusion is set forth both in the correspondence from
23 the U.S. trustee to counsel, denying a request that a committee
24 be appointed, and in the papers in opposition to the motion.

25 Under the circumstances, I am exercising my

1 discretion to deny the motion for appointment of an equity
2 committee. But I'm doing so without prejudice to such a motion
3 being presented at some time in the future should the facts
4 warrant the appointment of such a committee. Such a motion, in
5 order to be successful, in my view, would need to demonstrate
6 some credible reason to believe that there is an opportunity
7 for equity security holders to recover something of value in
8 this case and a showing that the debtor and other parties who
9 are involved in the case are not providing adequate
10 representation for that constituency. Motion denied.

11 MR. DUNNE: Thank you, Your Honor.

12 MR. MILLER: If Your Honor's body clock could take
13 it, we could take, Your Honor, the motion by Barclays and the
14 debtors to seal schedules to the asset purchase agreement.
15 Your discretion, Your Honor.

16 THE COURT: Now I'm exercising the discretion to
17 declare when lunch should take place. In my discretion, it's
18 now. Now the only question becomes, at this point, just for
19 everybody's comfort getting out and getting back, because we're
20 dealing with quite a few people and experience tells me that
21 our elevator service is suboptimal, particularly at times like
22 this. So my suggestion is that we turn at 2:30. Hopefully
23 that will be enough time for everybody to get out, get
24 something to eat, talk, and perhaps, to the extent it's
25 possible, reach some accommodations as to those matters that

1 are still contested.

2 MR. MILLER: Thank you, Your Honor.

3 THE COURT: We're adjourned until then.

4 (Recess from 1:16 p.m. until 2:40 p.m.)

5 THE COURT: Please be seated.

6 MR. MILLER: Good afternoon, Your Honor. Harvey
7 Miller for the debtors again.

8 THE COURT: Good afternoon. Did anything get
9 resolved over lunch?

10 MR. MILLER: Your Honor, that's good news and bad
11 news. Some of us gave up lunch in the interest of justice.
12 One more uncontested matter, Your Honor, will be the R3
13 transaction which Mr. Perez will describe in just a few
14 moments. There are, by my latest counts, Your Honor, thirteen
15 motions in connection with Rule 2004. The lead motion was the
16 Harbinger Funds motion. Harbinger has agreed to adjourn the
17 motion to November 5th and the debtors have agreed to meet in
18 that interim period with Harbinger in an effort to perhaps
19 resolve the motions. All the other movants with the exception
20 of Newport Global Opportunities have agreed to the same
21 adjournment. And we are -- will attempt to set up meetings,
22 maybe joint meetings with the movants to see if we can resolve
23 that.

24 THE COURT: Fine. So that means that the Newport
25 matter is still on and still contested?

1 MR. MILLER: Yes, Your Honor.

2 THE COURT: Okay.

3 MR. MILLER: Yes. Okay. With that, Your Honor, the
4 next matter on the agenda is the Barclays and debtors' motion
5 to seal the schedules to the asset purchase agreement, which is
6 docket number 430 and it is agenda II item 3. This motion will
7 be presented, Your Honor, by Cleary Gottlieb as the attorneys
8 for Barclays.

9 MR. WILLET: Excuse me. I'm sorry, Your Honor.
10 Sabin Willet for the Harbinger Funds. I just wanted to be
11 clear that the meeting that was described to you a second ago
12 is to be a meeting as we understand it with Alvarez.

13 MR. MILLER: Yes.

14 MR. WILLET: And on that basis, we'll adjourn to the
15 5th. Thank you.

16 MR. MILLER: They don't want to meet with me alone,
17 Your Honor. I understand.

18 MR. BAREFOOT: Good morning, Your Honor.

19 THE COURT: Good afternoon.

20 MR. BAREFOOT: Luc Barefoot from Cleary -- afternoon,
21 excuse me. Luc Barefoot from Cleary Gottlieb Steen & Hamilton
22 LLP for Barclays Capital here on the joint motions of the
23 debtors and Barclays to file under seal certain limited
24 schedules to the asset purchase agreement. The motion applies
25 only to Schedules A and B to the clarification letter that was

1 entered into between the debtors and Barclays. Those schedules
2 set forth a list of the proprietary securities positions that
3 were sold to Barclays. All of the other aspects of the APA,
4 including the clarification itself and all the amendments
5 thereto, have been publicly disclosed both on the docket and on
6 the Court's website.

7 We filed this motion only in response to certain
8 requests that the debtors were getting from creditors in order
9 to access these schedules and securities. We're certainly
10 mindful, Your Honor, of the need for transparency in these
11 proceedings and, as we set forth in our motion, we're willing
12 to share these schedules with creditors who will sign a
13 confidentiality agreement that limits their use to their role
14 as a creditor in these proceedings. We also, for those
15 creditors who are just seeking more general information and in
16 response to concerns that the committee raised, filed last
17 evening a summary that discloses the general composition of the
18 securities that are listed on the schedules and breaks it down
19 into the general categories and also discloses the par value or
20 the number of shares in each category. But in order to allow
21 unfettered access on the debtors' website and everywhere else
22 would cause significant commercial harm to Barclays as --

23 THE COURT: Could you explain why?

24 MR. BAREFOOT: Well, Your Honor, this certainly isn't
25 an evidentiary hearing as it's the first time this is up but I

1 don't think it's a controversial position that where all of
2 Barclays' competitors, including the members in Mr. Stamer's
3 group, are not required to disclose their own proprietary
4 portfolios and the compositions of those portfolios that
5 putting Barclays in the unique position of giving all of its
6 competitors access to that information limits its ability to
7 trade these securities in the market. And the balance that
8 we've struck in terms of offering creditors unfettered access
9 for their role as a creditor and a more general summary has
10 satisfied the concerns of the committee. I believe it's also
11 satisfied the concerns of the U.S. trustee and of all the other
12 creditors in the proceeding.

13 THE COURT: Do I understand that the only objection
14 that remains unresolved is the objection of Mr. Stamer and his
15 group?

16 MR. BAREFOOT: The only clarification I'd like to
17 make in that respect --

18 THE COURT: Is that a yes or a no?

19 MR. BAREFOOT: Yes, with the understanding that we're
20 still in the process of negotiating a confidentiality agreement
21 with the trustee for -- the U.K. administrator for LBIE. We're
22 hopeful that we'll be able to reach something out but their
23 counsel did ask that I reserve rights in the unlikely event
24 that we're not able to.

25 THE COURT: Wasn't that consistent with your position

1 from the outset which is that parties could see this if they
2 signed a confidentiality? That's no different, is it?

3 MR. BAREFOOT: No, Your Honor. It's the same. It's
4 just I wanted to make clear, per their request, that we haven't
5 documented that up yet.

6 And turning specifically to Mr. Stamer's objection in
7 which he claims that we haven't made the threshold showing that
8 this constitutes commercial information, you know, again, we
9 really think it's uncontroversial that where Barclays, by
10 disclosing this information, would be put in a situation that
11 is different than any of its competitors that that clearly
12 establishes commercial harm. And Mr. Stamer's --

13 THE COURT: I think you may be right. I just don't
14 think you've said it. By saying that it's so doesn't mean it's
15 so.

16 MR. BAREFOOT: Your Honor, if your concern is the
17 evidentiary showing, we're certainly happy to put this over to
18 an evidentiary hearing and we have been served with notices of
19 depositions from Mr. Stamer. We just didn't think that this
20 really rose to the level of something beyond judicial notice,
21 something that was --

22 THE COURT: Well, I think maybe it does. 107(b) is
23 pretty clear. And sealing of commercial and proprietary
24 information happens routinely in bankruptcy cases. But there's
25 a logical problem. You seal it if it's confidential but how do

1 you demonstrate that it's confidential? You demonstrate that
2 it's confidential through your assertions by simply saying
3 well, because it's a list of positions it has to be
4 confidential. I don't know if that's true.

5 MR. BAREFOOT: And if the list of positions
6 specifically that Barclays' competitors are not required to
7 disclose and I don't think that's open to factual dispute.

8 THE COURT: Well, that's not terribly different from
9 other bankruptcy acquisitions where the acquired assets are
10 identified and scheduled. Their competitors that are not
11 buying assets out of bankruptcy are in a different position.
12 Parties that buy assets out of bankruptcy understand that the
13 rules of the game include some level of, your word,
14 "transparency".

15 MR. BAREFOOT: And I think we've satisfied that level
16 of transparency both by our offer to provide them to people in
17 connection with their use as creditors and also to provide a
18 general overview. But for people who want this sort of CUSIP
19 by CUSIP identification that would be particularly useful to
20 people who are trading in these securities and particularly
21 harmful to Barclays, that information isn't available where
22 they want to use that for purposes other than their role as
23 creditors.

24 THE COURT: I think some parties want a CUSIP by
25 CUSIP identification to be sure whether or not a particular

1 underlying asset, say, in a repo transaction, ended up at
2 Barclays or someplace else.

3 MR. BAREFOOT: Certainly.

4 THE COURT: That was true of a matter that we had
5 some litigation on a few weeks ago. FD&R brought a declaratory
6 judgment action seeking a temporary restraining order in the
7 SIPA proceeding. Their issue was where's our security. I
8 expect they're not the only party in interest who wants to know
9 where's their security. Is that part of this?

10 MR. BAREFOOT: Your Honor, for those parties who are
11 interested in simply locating their security, that interest is
12 accommodated by a confidentiality agreement that says I'm
13 interested in using these schedules in connection with my role
14 as a creditor. The only interest that that confidentiality
15 agreement doesn't accommodate is people who want to use those
16 schedules to trade on the information.

17 THE COURT: Okay. I hear what you're saying and I'm
18 not trying to make your argument more difficult by pushing back
19 on it. But I am pushing back on it because there's a QED
20 aspect to this. You're saying it's confidential so it must be
21 confidential but you haven't demonstrated that it's
22 confidential. You've only said that I should conclude that
23 it's confidential because these are trading positions. And I'm
24 left with the shrug of my shoulders, well, what makes that
25 confidential other than you've said so.

1 MR. BAREFOOT: If Your Honor wants to put this over
2 to an evidentiary hearing --

3 THE COURT: Oh, no. It's not my motion. I have no
4 desire that it be decided today or on November 5 or on any
5 other day. It's your motion to prevail on one way or the other
6 or lose on one way or the other.

7 MR. BAREFOOT: Of course. And I believe that we have
8 made the requisite showing --

9 THE COURT: How?

10 MR. BAREFOOT: -- based on the simple uncontested
11 matter that I don't think Mr. Stamer would dispute that his
12 clients don't have to disclose what their trading information
13 is, what positions they hold and in what quantity. He's asking
14 us to make that --

15 THE COURT: That's certainly true of most hedge funds
16 that aren't ad hoc committees. I suppose because he's a group,
17 he relies upon an unpublished decision from Texas to take the
18 position that 2019 doesn't apply to him. That has not yet been
19 tested in this court; maybe it will be.

20 MR. BAREFOOT: Your Honor, we're happy to put this
21 over to an evidentiary hearing for November 5th. And in the
22 meantime, we'll work to make the requisite factual showing --

23 THE COURT: That's probably a good way to approach
24 this. And maybe you and Mr. Stamer can work something out such
25 that we don't have to convert what I think is a relatively

1 theoretical question into something that's unnecessarily time
2 consuming. To the extent that the materials that you seek to
3 protect in fact are properly characterized as confidential,
4 they should be sealed. The only issue I have is whether or not
5 you've made the requisite showing that these materials are, in
6 fact, confidential. Once you've done that, you'll win. But
7 you have it done it yet. Saying it doesn't make it so.

8 MR. BAREFOOT: Understood. Very well, Your Honor.

9 THE COURT: Mr. Stamer, this is great. You don't
10 have to say anything.

11 MR. STAMER: That's the whole idea. If you want,
12 I'll stand up and say I'm not going to say anything. Thank
13 you, Your Honor. We'll see you at the scheduled evidentiary
14 hearing.

15 THE COURT: Whenever that is.

16 MR. STAMER: Whenever that is.

17 THE COURT: If it has to happen.

18 MR. STAMER: Agreed.

19 MR. MILLER: The next matter, Your Honor, is the
20 motion of the debtors in connection with the R3 sale. Mr.
21 Perez will handle that matter.

22 MR. PEREZ: Good morning, Your Honor, Alfredo Perez.
23 Your Honor, this motion can be characterized as one of the
24 melting ice cubes. Lehman made an investment in R3, which is a
25 hedge fund, in May of last year. Obviously, the Court is well

1 aware what's happened in the market. There has been
2 significant deterioration. And, in essence, this is an effort
3 to extricate themselves from the hedge fund and allow it to go
4 forward. We're continuing to keep a small investment in
5 comparison. Large in most cases but small in comparison to the
6 original investment.

7 Your Honor, we received two objections. We received
8 an objection to the PTBC which was resolved by the language
9 that was included in the form of order that was sent last
10 night. There was a little tweaking because we had the wrong
11 defined term. So the order, the existing order, in paragraph 9
12 rather than saying "LBI's remaining interest", it talks about
13 the "purchased interest". Nonmaterial change.

14 The other objection we had, Your Honor, was from Mr.
15 Stamer's group. We had extensive discussions with them and we
16 were able to resolve the objections. And one of the premises
17 of resolving the objection was that because most of the
18 information that we provided to him was confidential that we
19 would read a proffer which would support the evidentiary
20 finding for the objection. So, with the Court's permission,
21 I'd like to proffer the testimony of Daniel Ehrmann

22 THE COURT: I take it that's consented to by Mr.
23 Stamer?

24 MR. STAMER: It is, Your Honor.

25 THE COURT: Fine.

1 MR. PEREZ: Your Honor, Mr. Ehrmann is sitting right
2 here. Right here. All right.

3 THE COURT: Could you identify who that individual
4 is?

5 MR. PEREZ: Yes, Your Honor. Mr. Ehrmann is a
6 managing director of Alvarez & Marsal. And he was the person
7 primary responsible for both the R3 sale and the Eagle sale
8 which is the other sale that's coming up today. Your Honor, if
9 asked to proffer, he would indicate that he's a managing
10 director with Alvarez & Marsal, that he has eight years of
11 interim management experience, that his industry experience
12 includes a wide variety of industries including apparel,
13 retail, consumer products, professional services. Most
14 recently, he was the CFO and senior vice president for business
15 planning and development with Spiegel Brands. He holds a law
16 degree from Assas University, a master's degree in corporate
17 law and economic science from the Sorbonne and a master's
18 degree in law from NYU. He is a member of both the Paris and
19 the New York bars. Earlier in his career, he spent five years
20 as an MNA associate at Cleary Gottlieb.

21 Mr. Ehrmann would testify that in May of 2008, LBHI,
22 through wholly owned subsidiaries, made an initial investment
23 of 1.1 billion into R3 for which they got a forty-five percent
24 nonvoting equity interest and a forty-eight LP interest. He
25 would also testify that pursuant to these agreements and

1 agreements of certain -- agreements of other LBHI affiliates,
2 they agreed to support the ongoing services of the fund either
3 directly or indirectly by providing prime brokerage services,
4 financing and marketing services. He would further testify
5 that the investment documents, which LBHI signed, had a two-
6 year lockup before it could withdraw any of the 1.1 billion
7 dollar investment. And he would also testify that at the time
8 that there were also multiple unrelated co-investors to Lehman
9 that also made substantial investments in the funds.

10 He would testify that the Chapter 11 cases created
11 significant uncertainty regarding the fund, its operation and
12 LBHI's initial investment in the fund, that if allowed to
13 continue, this uncertain state of affairs could lead to the
14 erosion of the value of LBHI's interest in the fund which would
15 otherwise inure to the benefit of the debtors' estate and its
16 creditors.

17 He would also testify that LBHI's co-investors have
18 alleged significant claims against the estate arising from
19 LBHI's inability to provide the ongoing support services to the
20 fund. Accordingly, in an effort to maximize the value of the
21 investment and to settle all the claims with the co-investors
22 in the funds, the parties have agreed to this purchase
23 agreement which accomplishes the objectives and provides an
24 opportunity for the estate to participate in the fund on a go
25 forward basis.

1 Mr. Ehrmann would testify that he first became
2 involved with this transaction on September 25th, 2008 and
3 since that time has been in constant contact with senior
4 management at R3, which is the fund, as well as LBHI's co-
5 investors and the various professionals that have been involved
6 in the transaction. He would testify that the negotiations
7 leading up to the R3 sale have been fair and at arms' length
8 and have been developed continuously on an hourly basis. He
9 would testify that he participated in multiple conference calls
10 and reviewed numerous drafts of the purchase agreement and the
11 related documents and that he believes that the efforts
12 resulted in the best possible transaction for the debtors.

13 He would further testify that the debtors'
14 professionals have been involved in negotiating this
15 transaction and that the creditors' committee, both through its
16 counsel, Milbank Tweed, and its financial advisor, Houlihan
17 Lokey, have been actively involved in the negotiations and
18 jointly pursued the interest of the estates throughout the
19 history of the transaction. He would testify that as a result
20 of the involvement of the professionals for the creditors'
21 committee in these negotiations, the consideration that was
22 received by the debtors was increased.

23 Mr. Ehrmann would testify that the buyers are not
24 insiders of the debtors and have conducted themselves in good
25 faith and fair dealing throughout the negotiations of the

1 transactions.

2 In connection with the transaction, Mr. Ehrmann would
3 testify that the purchase agreements provide that two
4 subsidiaries of LBHI which made the initial investment in the
5 fund, LBR3 Holdings L.P. and LBR3 Holdings GP, LLC will be
6 merged into LBHI prior to the closing of the transaction with
7 LBHI continuing as a surviving entity. LBHI will then sell its
8 equity interest in the fund to its co-investors for 125 million
9 dollars of cash at closing, a promissory note in the amount of
10 125 million that is due and payable on May 31, 2009, which will
11 bear interest at the six month T-bill rate, and will exchange
12 LBHI's remaining interest in the fund for a limited partnership
13 interest in the new fund having a value of 250 million dollars.

14 In addition, LBHI will receive an assignment of
15 substantially all of the claims of R3 Capital Partners have
16 against the various Lehman entities. Most significantly, LBHI
17 will receive a claim against Lehman Brothers International
18 Europe, LBIE, and certain of its affiliates believed to be in
19 the approximate amount of 590 million dollars. This claim is
20 without recourse, representation or any warranty by the
21 sellers. The debtors and the buyers have agreed to exchange --
22 I'm sorry, without warranty by the buyers. The debtors and the
23 buyers have agreed to exchange mutual releases of all claims
24 related to the transaction including any alleged claims that
25 the buyers may have against LBHI for failing to provide the

1 ongoing support services.

2 Mr. Ehrmann would further testify that in connection
3 with the foregoing releases, the debtors discussed potential
4 significant claims between the debtors and the buyers related
5 to the transaction.

6 Mr. Ehrmann would further testify that he believes
7 the transaction to be fair, reasonable and a sound exercise of
8 the debtors' business judgment. Significantly, it allows LBHI
9 to recover 250 million dollars, approximately twenty-five
10 percent of the initial investment notwithstanding the two-year
11 lockup period that would otherwise expire in May of 2010.
12 Moreover, he would testify that given the uncertainty in the
13 marketplace, the transaction allows for the maximum recovery of
14 LBHI's initial investment. The interests of the estate are
15 further capitalized by their redemption and contribution which
16 allows LBHI to participate as a limited partner in the new fund
17 without the burden to provide ongoing support services.

18 In light of these circumstances, Mr. Ehrmann would
19 testify that the net asset value of the new investments
20 represents a reasonable reduction of the original fund.

21 Mr. Ehrmann would further testify that the settlement
22 agreement and mutual release of the claims is well-informed,
23 reasonable and in the best interest of the estate. This
24 transaction allows the parties to extinguish their prior
25 relationship and to continue business going forward. The

1 settlement agreement also eliminates significant claims against
2 the estate including purported claims for breach of contract
3 and restrictions on the assignability of LBHI's interests as
4 well as the cost of litigations associated therewith.

5 In addition, Mr. Ehrmann would testify that if the
6 issues between the buyers and LBHI are not quickly resolved,
7 LBHI's initial investment may be held hostage and continue to
8 erode unnecessarily.

9 Finally, Mr. Ehrmann would testify that a private
10 sale is necessary and appropriate under the circumstances. He
11 would testify that the market for these assets is limited and
12 the buyers have asserted intention to enforce the contractual
13 restrictions on the assignment of LBHI's interest to a third
14 party. Although the debtors dispute the enforceability of
15 those restrictions, this private sale resolves the live
16 disputes and avoids time consuming litigation that is likely to
17 ensue.

18 Also, since the redemption is occurring at an agreed
19 net asset value, it is extremely unlikely that the buyer would
20 pay more for the purchased interest than if it were a
21 competitive bid.

22 Mr. Ehrmann would also testify that identifying a
23 third party purchaser would be significantly hindered by the
24 cloud of litigation over the assignability of LBHI's interest
25 in the fund. But the time associated with resolving such a

1 dispute with the buyers and subsequent marketing these assets
2 may unnecessarily duplicate efforts and will likely cause
3 further erosion of LBHI's initial investments in this volatile
4 market.

5 He would testify that no other purchaser could offer
6 the unique benefits of a global transaction including, most
7 significantly, the release of any claims asserted by the buyer
8 against LBHI and the assignment of significant claims to the
9 estate against various Lehman entities.

10 Finally, Mr. Ehrmann would testify that the prompt
11 consummation of the transaction is in the best interest of the
12 estate and will maximize value of the remaining investment
13 fund.

14 THE COURT: Is there any objection to my receipt of
15 this proffer as evidence in support of the R3 transaction?
16 Hearing no objection, I accept the proffer. Is there any
17 desire on the part of any party to examine Mr. Ehrmann in
18 connection with the proffer? There's no need to cross-examine.

19 MR. PEREZ: Thank you.

20 THE COURT: Mr. Stamer, are you satisfied?

21 MR. STAMER: I am, Your Honor. May I just make a two
22 minute statement for the record?

23 THE COURT: Sure.

24 MR. STAMER: Again, for the record, Michael Stamer
25 from Akin Gump on behalf of the informal noteholder group.

1 Your Honor, we filed an objection to the R3 transaction on two
2 grounds. The first was insufficient information and the asset
3 wasn't shopped. Literally fifteen minutes our objection hit
4 the docket, we got a call from Mr. Perez saying what can we do
5 to make you comfortable. What information do you need? From
6 that moment until shortly before midnight last night, we've
7 been in conversations with the debtors, with R3, with the
8 committee, with the committee's financial advisor. We were
9 made aware of the improvements in the transaction that took
10 place between the first time a deal was struck and where we are
11 today. We were made aware of certain assignability issues,
12 whether they were valid or not. There are issues that would be
13 subject to litigation. And we were made aware of certain
14 potential claims assertable by R3 against Lehman entities.

15 Based on the information that we received from the
16 parties involved, based upon the proffer that was just made in
17 court, Your Honor, we're withdrawing our objection.

18 THE COURT: Fine. Thank you.

19 MR. STAMER: Thank you, Your Honor.

20 THE COURT: Does anyone else have any comments with
21 respect to this proposed transaction?

22 MS. EAGLE: Your Honor, Sara Eagle on behalf of the
23 Pension Benefit Guaranty Corporation. I just want to say that
24 we'll withdraw our objection to the extent that the language
25 critiques that were made reference to are incorporated in the

1 order.

2 THE COURT: Okay.

3 MR. FLICS: Your Honor, Martin Flics from Linklaters
4 LLP for the joint administrators. I'd just like to be heard
5 very briefly. I apologize, we didn't file a piece of paper in
6 connection with this motion. And I really only have one point
7 which is a result of a discussion that I had with Mr. Perez
8 shortly before the lunch break. The agreement, which we
9 received the other day, has a number of complex provisions.
10 But one of the matters that you can imagine is very important
11 to us and that's why I wanted to state it on the record is that
12 it provide for releases by various Lehman Brothers parties.
13 And there is a schedule, Schedule 1A to this agreement, which
14 includes those required LB released parties, in the language of
15 the agreement, and those who are nonrequired LB released
16 parties. And just so there is no doubt in light of the short
17 notice, I note that Lehman Brothers International Europe is a
18 nonrequired release party, meaning, that its release will not
19 be sought or may be sought, may not be obtained. It's
20 certainly not required or any attempt for it to be compelled in
21 connection with this motion and that Lehman Brothers
22 International Europe does indeed retain all of its rights,
23 claims and defenses in connection with the subject matter of
24 this motion. Thank you, Your Honor.

25 THE COURT: You've said it so I suppose it's true.

1 MR. FLICS: Well, Your Honor, I've said it.

2 THE COURT: Okay.

3 MR. FLICS: Thank you.

4 THE COURT: Is it true, Mr. Perez?

5 MR. PEREZ: Well, we're going to try to get a release
6 from them but --

7 THE COURT: Okay.

8 MR. PEREZ: -- I don't know whether we'll succeed.
9 Your Honor, on the basis of the proffer and the fact that both
10 of the objections have been withdrawn, we would request that
11 the Court enter an order approving this transaction. There is
12 one change to the purchase agreement. It had to do with the
13 tax allocation. The committee has approved it. It was
14 actually a change done at the debtors' request. I have
15 highlighted language for the Court if the Court wants to see
16 it. May I approach? If the Court doesn't want to see it,
17 that's fine.

18 THE COURT: I haven't said that I want to see it.

19 MR. PEREZ: That's fine.

20 THE COURT: I'm sure it will be useful for me to see
21 it.

22 MR. PEREZ: Your Honor, and I'm going to try to make
23 my proffers --

24 THE COURT: Why don't you approach and I'll take it.
25 And I don't think I need to see it before we move on, do I?

1 MR. PEREZ: No, no.

2 THE COURT: Fine. I have it.

3 MR. PEREZ: Thank you, Your Honor.

4 THE COURT: Looks good.

5 MR. PEREZ: In the future, I'll make my proffers
6 shorter. With that, Your Honor, we would request entry of the
7 order. This is a little time sensitive because they are trying
8 to close today.

9 THE COURT: Well, I take it based upon the comments
10 that have been made and the fact a still packed courtroom does
11 not include anybody else standing up to object that there are
12 no objections to the prompt entry of this order, I'm prepared
13 to both approve it and arrange for prompt entry. But --

14 MR. PEREZ: Thank you, Your Honor.

15 THE COURT: -- in order for the order to be entered
16 promptly so that you can close today, it will have to occur
17 during a short break --

18 MR. PEREZ: Thank you.

19 THE COURT: -- because I will need to both review the
20 order, pay close attention to the language that you've shown me
21 and make sure that the order is entered on the electronic
22 docket.

23 MR. PEREZ: Okay.

24 THE COURT: If in fact, it's time sensitive enough to
25 call for a break of, say, ten minutes at some point, we'll do

1 that.

2 MR. PEREZ: No. I just -- Mr. Wofford represents the
3 purchaser, Your Honor.

4 MR. WOFFORD: Your Honor, Keith Wofford from Ropes &
5 Gray on behalf of R3 Capital Management LLC. Your Honor, we
6 are trying to close tomorrow but there are wires and things
7 that have to be set up. And given the lack of knowledge as to
8 how late into the night the proceedings would go, we would be
9 satisfied merely if the Court has ruled in favor and --

10 THE COURT: I've done that.

11 MR. WOFFORD: Okay. And as long as it's entered as
12 soon as is reasonably possible so that we know it will be a
13 closing condition to satisfy for tomorrow morning.

14 THE COURT: It will be entered as soon as it's
15 reasonably possible.

16 MR. PEREZ: Thank you, Your Honor. We very much
17 appreciate it.

18 MR. WOFFORD: Thank you, Your Honor. May the R3
19 parties be excused, Your Honor, from the courtroom?

20 THE COURT: You may be.

21 MR. MILLER: Your Honor, just a housekeeping detail.
22 The motion to seal, I take it, that is adjourned to November
23 5th --

24 THE COURT: Well --

25 MR. MILLER: -- for an evidentiary hearing if

1 necessary?

2 THE COURT: Well, it's an important detail. There
3 was a request for an evidentiary hearing. The next omnibus day
4 is November 5. I suppose it makes sense to adjourn it to that
5 date unless counsel for Barclays would like to have this listed
6 specially to the extent it may be a time consuming hearing. My
7 belief is that it's probably going to be a brief hearing and
8 that we can include it on the November 5 omnibus date. Is that
9 right?

10 MR. BAREFOOT: Thank you, Your Honor. November 5 is
11 fine.

12 THE COURT: Fine. That's when it is.

13 MR. MILLER: Okay. And, Your Honor, just for the
14 record, so we don't lose track of it, the informal noteholders
15 group -- I think I got that right -- was originally appeared in
16 this proceeding as the ad hoc bondholders committee in
17 connection with the Barclays sale. I think that's the same
18 group. So I would just like to have that on the record.

19 THE COURT: Well --

20 MR. STAMER: Your Honor, I think the record speaks
21 for itself.

22 THE COURT: It usually does.

23 MR. MILLER: The next matter, Your Honor, which Mr.
24 Perez will be handling, is the debtors' motion in connection
25 with the sale of the Eagle Energy Partners I L.P. That's

1 agenda item II, number 7, Your Honor.

2 MR. PEREZ: Good morning, Your Honor. Alfredo Perez
3 on behalf of the debtors. Your Honor -- excuse me, Your Honor.
4 Your Honor, pursuant to this motion, the debtors are doing two
5 things. They are selling their partnership interests in Eagle
6 Energy, which is an oil and gas -- energy trading company
7 headquartered in Houston, Texas. In addition, Your Honor, LBHI
8 is compromising a claim, approximately 630 million dollar
9 claim, in which it is compromising and receiving a payment of
10 230 million dollars. And, Your Honor, that's the primary
11 consideration for the motion.

12 We received, Your Honor, several objections to the
13 motion and I'll address the objections. We received an
14 objection from the Pension Guaranty -- Pension Benefit Guaranty
15 Corporation. And it really wasn't an objection. It was a
16 response. And Ms. Eagle is here. But we are going -- that is
17 going forward. We're going to make one adjustment in the
18 purchase agreement which is there is a representation that an
19 indemnity relating to any potential benefit claims and the PGBC
20 has filed a statement saying that we believe that there are
21 potential underfunding liabilities and to the extent that Eagle
22 is part of the control group, they may be liable for those
23 underfunding liabilities. We, one, both dispute that and don't
24 think that it would be applicable to any entity after it's
25 sold. But we'll leave that for a different day. But there is

1 a provision in the contract that says there aren't any
2 pension -- potential pension liabilities.

3 So we're amending that representation and the
4 indemnity to go post-closing through the conclusion of these
5 cases. And then to the extent that there's any claim made
6 against EDFT, which is the purchaser, Electricite de France,
7 which is a large company, that they would have a secured claim
8 in the proceeds. We're not going to perfect in the sense of
9 doing any documents. It's just going to be an ordered
10 paragraph in the order. So I think we have dealt with the
11 issues raised by the PGBC. Although it was in the nature of a
12 response, it really wasn't in the nature of an objection.

13 Also, Your Honor, we received a limited objection
14 from Lloyds Bank relating to two letters of credit. I believe,
15 Your Honor, that, in fact, those letters of credit have already
16 been substituted. So I think that the issues raised by Lloyd
17 Bank are resolved or in the process of being resolved. The two
18 letters of credit will be returned and they will be
19 substituted.

20 THE COURT: Is counsel for Lloyds present?

21 MS. NED: Yes, Your Honor. Omeka (ph.) Ned from
22 Lovells --

23 THE COURT: Can you come forward, please? State your
24 name for the record.

25 MS. NED: Sure. Good afternoon, Your Honor. Omeka

1 Ned on behalf of Lloyds TSB Bank. Your Honor, as Mr. Perez
2 said, we filed a limited objection to preserve our rights with
3 respect to certain letters of credit. We have been told by
4 Eagle that Lloyds will take off the liability by cash
5 collateralizing these LCs and that that process is continuing
6 today. However, I have not heard that it's been completed.

7 Our only issue is that we're not prejudiced unfairly
8 in connection with this transaction. So if the process that
9 LBHI and Eagle have agreed works out then our objection is
10 resolved. But to the extent it's not then we reserve our
11 rights to come back and just to object to how the LCs are being
12 treated.

13 THE COURT: Okay.

14 MR. PEREZ: Thank you, Your Honor. All right. Then,
15 Your Honor, we received three objections in the last few days
16 and then we received one objection last night. Basically, the
17 three objections that we received go to the allocation, if you
18 will, of the purchase price -- or of the consideration.
19 There's 230 million dollars that is being paid on account of
20 the loan that had been made by LBHI to Eagle. LBHI is
21 forgiving -- I think it's 330 million dollars of that loan.
22 I'm sorry, 430 million dollars of that loan and 230 is being
23 paid on account of that loan. And that's being purchased by
24 the purchaser to contribute to Eagle. The equity interests, if
25 you will, Your Honor, are receiving a nominal consideration for

1 that.

2 Your Honor, I have a copy of the org chart which I'd
3 like to hand up for the Court if that's acceptable.

4 THE COURT: This is a different organizational chart?

5 MR. PEREZ: Well, this is -- it's down from one of
6 those. It is on there but you only really go to here.

7 THE COURT: Well, you're welcome to come forward with
8 it and I'll figure out where it fits. Thank you. Oh, this is
9 definitely different. It has all kinds of lines and
10 percentages.

11 MR. PEREZ: All right. Thank you, Your Honor. The
12 issue here is -- or the nature of the objections is that Lehman
13 Brothers Commodity Services Inc., which is in the middle line
14 on the far left-hand side, who is -- owns ninety-four percent
15 interest in Eagle is receiving a nominal consideration and that
16 LBHI, who has made a loan to Eagle, is receiving 230 million
17 dollars.

18 Your Honor, we have been working trying to resolve
19 those objections. And we have been able to resolve the
20 objection as it relates to one of the parties, EnergyCo
21 Marketing and Trading, Mr. Etkin's client. We have not been
22 able to resolve the objection as it relates to the ad hoc
23 committee of bondholders or Bank of New York Mellon. And, Your
24 Honor, the way that we have resolved the objection, if I may
25 approach and give you a marked copy of the order --

1 THE COURT: You have all kinds of things for me this
2 afternoon, don't you? Thank you. Now, do I understand that
3 the marked order resolves only the objection of Mr. Etkin's
4 client?

5 MR. PEREZ: Yes. In essence, the three objectors are
6 making the same objections but I've been able to resolve one
7 and not the other two.

8 THE COURT: In other words, the language that was
9 acceptable to Mr. Etkin is not acceptable to the others?

10 MR. PEREZ: Correct, correct. All right. And if you
11 will, Your Honor, if I could just take you through the order,
12 because I think this addresses -- and then at that point, if
13 you'd like to hear from the objectors, Mr. Ehrmann is here.
14 I'm prepared to go forward and make a showing if that's
15 necessary. But, Your Honor, if I could just --

16 THE COURT: Well, if you want to prevail, I think it
17 will be necessary.

18 MR. PEREZ: We'd like to prevail, Your Honor. Your
19 Honor, if you look at the next to last page of the order, if I
20 could just take you through the changes, the -- well, if you
21 could just go back one page, unfortunately, when the Barclays
22 transaction got done, the lease to Eagle was transferred to
23 Barclays inadvertently. So at the very bottom of the second --
24 I'm sorry, of the third page of this order, we're basically
25 saying that that was done in error. And at the top of the next

1 page, it says that Barclays has no liability for that lease.
2 It was done in error; it was transferred to them in error and
3 we're just saying it didn't happen and it's being assumed and
4 assigned to Eagle.

5 Then, Your Honor, the next --

6 THE COURT: Barclays acknowledges this?

7 MR. BAREFOOT: Yes, Your Honor, we've negotiated that
8 language with the debtors.

9 THE COURT: Fine.

10 MR. PEREZ: Next, Your Honor, the next paragraph in
11 there relates to a request that we had from the U.S. attorney
12 to put in language to make sure that the releases don't affect
13 any governmental unit or go beyond what would be normal
14 releases.

15 And then, Your Honor, it's really the last two
16 paragraphs that were put in to address the objections.

17 THE COURT: This language was in Mr. Etkin's
18 objection, I think. Didn't you have language in your
19 objection?

20 MR. ETKINS: Not exactly, Your Honor.

21 THE COURT: But close?

22 MR. ETKINS: But close enough, I guess.

23 MR. PEREZ: And, in essence --

24 MR. ETKINS: It's certainly okay with me, Your Honor.
25 If there are no objections, I hope -- I don't think --

1 MR. PEREZ: Okay. Your Honor, basically, it says
2 that nothing in the order or the purchase agreement will be
3 deemed to determine as between LBHI and Commodity which is the
4 ninety-four percent owner. The allocation of the proceeds of
5 the sale or the appropriate characterization of the
6 intercompany claims with respect to -- and that those issues
7 are fully reserved. That's number one. And then number two,
8 if it's ever determined that the money belonged to Commodity or
9 that Commodity had the right to the sales proceeds, either as a
10 result of a recharacterization or a reallocation, Commodity
11 will be entitled to an administrative expense as if it had made
12 an intercompany advance pursuant to the -- I hope to be entered
13 cash management order which would, in essence, give them a
14 superpriority claim for any money that otherwise should have
15 gone to them that didn't go to them. And that's how we had
16 proposed to resolve these objections.

17 THE COURT: So we took care of Mr. Etkin's client.
18 Mr. Etkin, you concur? This is satisfactory?

19 MR. ETKINS: It is satisfactory. I think the only
20 issue is, as Mr. Perez alluded to, is one of timing. It hinges
21 upon the treatment in a cash management order that is yet to be
22 entered by the Court.

23 THE COURT: Well, we'll see where we end up with that
24 this afternoon.

25 MR. PEREZ: Yes, Your Honor.

1 THE COURT: Why if you're willing to do this for Mr.
2 Etkin and -- is the drafting of language to accommodate the
3 other objections not a feasible solution?

4 MR. PEREZ: Your Honor, I've offered that to the
5 other objectors. Was that the question?

6 THE COURT: Well, I guess the question is why are we
7 proceeding with a contested hearing with respect to this if the
8 debtor is willing to come up with language to accommodate
9 issues of entitlement to these proceeds?

10 MR. O'NEILL: Your Honor, Brad O'Neill, Kramer Levin,
11 on behalf of Bank of New York Mellon. I think the issue really
12 is one of what the appropriate protection for the creditors of
13 Commodities should be. By putting the money in Holdings and
14 granting an administrative claim, you are, in effect, assuming
15 that the characterization of this intercompany transfer as debt
16 is accurate. And, you know, as you've already said several
17 times today, saying it so doesn't make it so. And by
18 transferring the money up, you're essentially putting the
19 creditors of Commodities at some risk that the proceeds of the
20 sale if they're right about the character -- or if the debtors
21 are not able to sustain the characterization of this transfer
22 as debt that their risk that some portion of that proceeds
23 would be dissipated in the Holdings estate. And so while we
24 appreciate the reservation of our rights, what we're really
25 looking for is some form of segregation, either in escrow or

1 segregated account subject to further order of this Court so
2 that the proceeds couldn't be used for other purposes pending
3 our ability to review to achieve as the debtors hope to achieve
4 transparency concerning the nature of these transactions. And
5 if they can demonstrate to us, to our satisfaction, that this
6 is, in fact, a legitimate intercompany debt then the
7 segregation could end. If there turned out to be a dispute
8 about it, then we would be back in front of Your Honor to
9 arrange some type of process to resolve that dispute. But
10 basically, to distill it down to its essence, we want an
11 escrow, we want segregation as opposed to having the money
12 actually transferred up based on the presumption that this is a
13 debt which hasn't been established and subjecting us to the
14 additional risk that potentially the Holdings estate might --
15 or that those proceeds might be dissipated in the Holdings
16 estate.

17 THE COURT: Okay. I understand your position.

18 MR. MUNSCH: Your Honor, Russ Munsch on behalf of the
19 ad hoc committee of administrative bondholders. We would
20 reiterate the position of the Bank of New York as well in terms
21 of requiring some type of segregation. As we've heard this
22 morning, the debtor is simply trying to get its hands around a
23 mountain of information. All we've been able to find out is
24 that there is some intercompany loan between LBHI and LB
25 Commodities. And obviously, we'd like to get information on

1 that and we do think it's inappropriate that the funds are, in
2 essence, swept up to LBHI before there's been any really review
3 or analysis from the debtor or any other party as to what the
4 true character of those funds are. We're willing to do some
5 short time fuse on an opportunity to review that as long as the
6 proceeds are escrowed, an opportunity to review information so
7 we have an opportunity to determine whether those funds are
8 appropriate to go to LBHI or to Lehman Brothers Commodities.

9 THE COURT: All right. It sounds to me from what
10 I've heard that nobody's really complaining that the
11 transaction is an inappropriate transaction or shouldn't happen
12 but rather that the transaction should happen protecting
13 everybody's rights in different ways. And the continuing
14 objectors say the only way to really protect their rights is
15 for the money to be held in an escrow account of some form and
16 not be upstreamed to Lehman Brothers Holdings Inc. Is that
17 what's going on?

18 MR. PEREZ: Absolutely, Your Honor. But I think the
19 characterization of it being upstreamed is, in this case, not
20 quite correct. But, Your Honor, I do think that --

21 THE COURT: Okay. I'm sorry for saying that.

22 MR. PEREZ: No, no. I --

23 THE COURT: I don't know what the right
24 characterization is but this is really not terribly different
25 from some of the arguments we had during the Barclay sale

1 hearing as to which one of the separate Lehman entities is
2 actually entitled to benefit from the proceeds. And because
3 there are different creditors who assert claims at different
4 levels of the structure, these are important issues and they're
5 likely to recur.

6 MR. PEREZ: Absolutely, Your Honor.

7 THE COURT: So it may make some sense to have a
8 consistent approach.

9 MR. PEREZ: Right. And, Your Honor, I think the
10 approach that we have taken so far and certainly the approach
11 that my client, that Alvarez and Marsal would like to take is
12 to reserve all of the rights -- and I'm happy to put any
13 language in there and then to provide for, in essence, a
14 superpriority administrative expense to that extent.

15 THE COURT: I'm going to suggest that we table this
16 until after we have addressed the cash management motion.
17 Because it seems to me that if there is consensus that the cash
18 management motion should be approved with inter-entity
19 protections in a form that is acceptable for purposes of cash
20 management that those same protections should be appropriate
21 with respect to this transaction. It certainly seems that way
22 to me. I see no reason why this should be separate treatment
23 as to disputed claims in connection with Eagle Energy Partners
24 but an acceptance that massive amounts of cash can flow back
25 and forth within what is left of the Lehman system. And if

1 it's, in fact, true, a superpriority claim is enough to provide
2 adequate protection. So, let's just see where we stand on cash
3 management.

4 MR. PEREZ: Yes. Your Honor, can I just get my cash
5 management --

6 THE COURT: Are you the cash management guru, too?

7 MR. PEREZ: Your Honor, I've hidden the trifecta
8 today.

9 (Pause)

10 MR. PEREZ: Your Honor, very late last night or
11 perhaps early this morning -- again, Alfredo Perez, Your Honor,
12 on behalf of the debtors. Very late last night or perhaps
13 early this morning, we filed a revised form of cash management
14 order. And I would like to take the Court through the changes
15 that we have made in that order.

16 THE COURT: Why don't you hand that one up? Thank
17 you.

18 MR. PEREZ: Your Honor, there have been various
19 changes that have been made, but the most significant changes,
20 Your Honor, have to do with the objections and the discussions
21 that we had with the creditors' committee with respect to the
22 very issues that the Court raised. And we've had a lot of
23 discussion with them over the last several weeks and I think
24 last night probably around ten or eleven I think we finished up
25 the negotiations and this order reflects that.

1 First of all, Your Honor, the --

2 THE COURT: Let me just ask a question that I suppose
3 is obvious. Does it reflect consensus between the creditors'
4 committee and the debtors?

5 MR. PEREZ: Yes.

6 THE COURT: Okay.

7 MR. PEREZ: So, Your Honor, the key part of the order
8 is at the last order paragraph on page 5. And in essence what
9 it says is "That the debtor shall account for the movement of
10 cash and any collection of disbursement activity between the
11 debtors and affiliates through the intercompany accounting and
12 from and after the date of the order, (1) the transfer of cash
13 to or for the benefit of any debtor directly or indirectly from
14 any debtor or non debtor shall be entitled the transferring
15 affiliate to an allowed claim in that debtors' Chapter 11 case
16 under Sections 364(c)(1) 507(b) of the Bankruptcy Code, having
17 a priority over any and all administrative expenses of the kind
18 specified in 503(b) and 507 of the bankruptcy code. And (2)
19 with respect to any transfer of cash by the debtor to or for
20 the benefit of any non debtor affiliate pursuant to this order,
21 the debtor shall use commercially reasonable efforts to obtain
22 from the affiliate a note accruing interest at a market rate,
23 which note may be a master note covering all such transfers and
24 (b) a valid perfected junior lien, junior to any existing liens
25 on such affiliate". And then, Your Honor, that's the claims

1 that they would get. In addition to that --

2 THE COURT: I know you've negotiated that language
3 but I don't know what that means. What does it mean for the
4 debtors' commercially reasonable efforts to obtain this? Does
5 that mean use your commercially reasonable efforts to do that
6 and if you can't do it there's no consequence?

7 MR. PEREZ: No, Your Honor. I believe that with
8 respect to the notes, we will get the notes. It's just a
9 matter of how long it's going to take us to get the notes. And
10 remember, Your Honor, this is an interim order. We expect to
11 be back here November 5th and that's one of the things that the
12 committee would like for that to go away. With respect to the
13 security interest, it may not be possible for us to obtain
14 security interests from perhaps some foreign affiliate or
15 something like that. At that point, we'd have to determine
16 whether we want to advance any funds. I think that decision
17 has to be made. But this is only to the extent that there's
18 money going to a non debtor entity. With respect to a debtor
19 entity, it's a super priority done. With respect to a non
20 debtor entity, it's really a timing issue more than anything
21 else. I think the goal is to have notes and security interest
22 for all of the non debtor affiliates. And then --

23 THE COURT: Well, Lehmann Brother's Commodity
24 Services is a non debtor. Right?

25 MR. PEREZ: It's a debtor, Your Honor.

1 THE COURT: It's a debtor?

2 MR. PEREZ: It's a debtor.

3 THE COURT: It's hard to tell.

4 MR. PEREZ: If we would go to the third page, Your
5 Honor.

6 THE COURT: I'm looking at the first page.

7 MR. PEREZ: Third page.

8 THE COURT: Oh, there it is.

9 MR. PEREZ: Third page, Your Honor.

10 THE COURT: I see it.

11 MR. PEREZ: If you see Commodity Service which owns
12 Eagle Energy --

13 THE COURT: Never mind, I see it.

14 MR. PEREZ: -- it's a debtor. And then, Your Honor,
15 there are what I would call the reporting aspects of this order
16 and kind of the protocols that we have established. So if we
17 read further, to the extent that we seek to transfer anything
18 in excess of twenty-five million dollars in a single
19 transaction or in excess of forty million dollars in the
20 aggregate of any calendar month, will give them five business
21 days notice of that; they'll have an opportunity to object to
22 the extent that they don't agree with our business judgment on
23 that.

24 In addition, Your Honor, just right before the
25 ordered paragraphs, there is a stipulation, and that's on page

1 3, in the middle of page 3, that we've entered into a protocol
2 pursuant to which the debtors will provide the committee the
3 following reports in a format acceptable to the committee.

4 One, a report on cash activities on a weekly basis.

5 Two, a rolling thirteen week forecast updated
6 monthly.

7 And three, a monthly postpetition intercompany
8 activity and intercompany balances.

9 So that's basically -- there's both the protection
10 aspect of it and then there is the reporting aspects of it.
11 And I think with that, the committee was satisfied with the
12 cash management motion, Your Honor.

13 Your Honor, we received numerous objections and let
14 me make a couple of points clear. Number one, we in the motion
15 to strive what happened historically, that's really not
16 happening anymore. There is no cash sweep anymore. So to some
17 extent it is our cash management system; it's not -- a couple
18 of the parties said you really should centralize cash
19 management system because it's our cash management system but
20 it's really not the centralized cash management system that
21 existed before the bankruptcy. That's not here.

22 Number two, the goal of Alvarez and Marsal and
23 Mr. Cohn who is the person who is particularly responsible for
24 this, is to absolutely minimize the movement of monies from one
25 entity to the other entity. Obviously, if an entity has no

1 money -- has no liquidity but has assets it may need to fund
2 insurance and things of that nature.

3 So we received numerous objections, Your Honor, and I
4 believe that the objections kind of fall into two categories.

5 One, are what I would call the objections -- the
6 protection/reporting objections which I think are addressed
7 with respect to the creditors' committee. The other set of
8 objections really have to do with the impact or potential
9 impact of the cash management system on anybody's particular
10 claim or their rights or how things -- what will happen to them
11 in this case. And unfortunately, in the -- with no good deed
12 going unpunished, Your Honor, at the bottom of page 6 we
13 inserted a paragraph having to do with the Solace and MKP
14 Opportunity Master Fund (ph.). In essence, they mistakenly
15 wired money in. We recognize that they mistakenly wired money
16 in. We instructed the bank to wire it out and the bank struck
17 the account. So we put this paragraph in there because we, in
18 essence, tried to address their concern. Unfortunately, that
19 has resulted in many, many, many requests -- similar requests.
20 And so I would propose, and it's not in here, what I would
21 propose to do is to insert a sentence in this paragraph which
22 says that nothing in this paragraph affects any of the rights
23 that you might otherwise have. So in other words, that there
24 shouldn't be any negative inference drawn from this paragraph.
25 So to the extent that somebody believes they have a claim, this

1 paragraph doesn't impact it one way or the other. And so I
2 would propose to make that change. I'm not sure that -- I
3 think people want to be mentioned by name and I regret that I
4 agreed to put this in. At this point, I don't think I could
5 back out, although if the Court tells me I can; I'm happy to do
6 it but --

7 THE COURT: I'm not going to say that. You've made
8 an agreement and I guess you're stuck with it.

9 MR. PEREZ: Okay.

10 THE COURT: It does seem that this is becoming almost
11 like an earmark order which is not such a good thing.

12 MR. PEREZ: Exactly.

13 THE COURT: I suggest that to the extent that we're
14 dealing with an order which is really not designed to deal with
15 the rights and claims of individual creditors, I'd rather to
16 propose a global generally applicable system for doing the cash
17 and for protecting the rights of those creditors who have
18 claims at particular entity levels of the Lehmann family, that
19 it's probably best not to burden the order with too much of
20 what I'm half jokingly calling earmarks but it actually applies
21 in this instance. Just for purposes of being able to get to an
22 agreed order, you may have to do it up to a point.

23 MR. PEREZ: Right.

24 THE COURT: Perhaps it's possible for some clever
25 lawyers working together to come up with some language of

1 general application that could fit everybody without having to
2 name them.

3 MR. PEREZ: Right. Your Honor, I think that -- and
4 we did receive this from one of the other persons who once we
5 told them we couldn't put his name in he said okay, well, fine.
6 At least say that this paragraph doesn't create a negative
7 inference. And we're willing to do that.

8 And with that, Your Honor, I'm not sure exactly who
9 remains as an objector.

10 THE COURT: Let's find out.

11 MR. DUNNE: Your Honor, may I be heard first?

12 THE COURT: Absolutely.

13 MR. DUNNE: For the record, Dennis Dunne from
14 Milbank, Tweed on behalf of the official creditors' committee.
15 Mr. Perez is right that we worked extensively with the debtors
16 to craft some of the protocols that you see in this version. I
17 actually wanted to stand up to talk about and Your Honor picked
18 up on this, the negative pregnant that's created by some of the
19 language in the order. For instance, if they used their
20 commercially reasonable efforts to try to obtain the investment
21 on a secured basis and fail can they still go forward because
22 they used their commercially reasonable efforts? We're viewing
23 the consent proviso as the umbrella override on that and if
24 it's above the threshold, the twenty-five million dollars
25 individually or forty million dollars in aggregate for any one

1 month, they need the committee consent. It may be that if they
2 use their commercially reasonable efforts and they can't thread
3 the needle through the negative pledges with respect to the non
4 debtor or other restrictive covenants, that we then don't
5 consent because it doesn't make sense to take cash from LBHI
6 where there may be relatively small amounts of secured debt and
7 downstream it or move it somewhere else in the system below
8 secured debt in order to, in essence, grow the secured
9 creditors' claim. And so if that happens, we'll be back in
10 front of Your Honor if there's a disagreement. Presumably, we
11 reach the same business judgment. The same is true between
12 debtors.

13 If we're above the thresholds, super priority may in
14 many situations make sense unless we're talking about an entity
15 that has a substantial amount of secured debts and a super
16 priority claim from some other entity in the Lehmann family
17 maybe below all the secured debt. And if we run into that
18 hypothetical, don't know if we will, we'll either agree. If we
19 do, great, if not we'll be back in front of you. And with
20 that, Your Honor, unless you have questions, we support enter
21 to the cash management.

22 THE COURT: No, I'm satisfied that the committee has
23 worked diligently to achieve a consensus on this order but also
24 recognize that there are others who are not in retent yet.

25 MR. DUNNE: Thank you, Your Honor.

1 THE COURT: Looks like we have a -- it's either a
2 long line of people interested in getting a better view or
3 people who actually want to speak to this question. I'm
4 guessing it's the latter.

5 MR. DUBLIN: I'll try to be brief, Your Honor. Phil
6 Dublin, Akin Gump on behalf of the Informal Noteholder Group.
7 Your Honor, the committee has made great strides in addressing
8 a number of our concerns but there are some that remain
9 primarily with respect to transfers to non debtors. The fact
10 that the debtors are going to use commercially reasonable
11 efforts, I think you picked this up right off the bat,
12 commercially reasonable efforts to get a lien on a transfer to
13 a non debtor we do not believe provides the necessary
14 protections. The debtors are seeking -- for example, the
15 debtors' seeking approval today of the bidding procedures to
16 the IMD business sale. That transaction contemplates
17 potentially multiple non debtors filing for bankruptcy in the
18 future. If that's the case and if liens are not granted in
19 respect to inter company transfers respective of any entity
20 that may file in the future, then there's no protection for
21 LBHI or any of the current debtors with respect to any
22 transfers they make to those entities if they're insolvent.
23 We'll end up with prepetition unsecured claims that may not be
24 able to get satisfied. So we think with respect to any
25 intercompany transfer to a non debtor, there has to be liens.

1 And if they cannot get the lien, then automatically they cannot
2 make the transfer.

3 Also, with respect to the system that's set up with
4 the creditors' committee, we believe that a twenty-five million
5 dollar single transaction or forty-million dollar in the
6 aggregate per month is too high of a threshold. Mr. Miller
7 referenced earlier, he has no idea how long these cases are
8 going to last and how many -- you saw the chart of three pages
9 of how many debtors we have. That can be an astronomical
10 amount of money that they're not proper protection for.

11 In addition, Your Honor, it's our understanding that
12 the protocol that's referenced in the proposed order, has not
13 actually been fully agreed to yet and no other party other than
14 the creditors' committee has seen it and it can be amended
15 without any notice. So we believe that in order for that
16 protocol to be approved, it should be put out on notice and
17 parties should have the opportunity to object to it and any
18 modifications to it.

19 THE COURT: Thank you.

20 MR. FLICS: Martin Flics from Linklaters LLP for the
21 joint administrators. Your Honor, our issue is a little bit
22 different and perhaps unique to us. As you heard at some
23 length from me at the sale hearing, and as you've heard today
24 from Mr. Miller and Mr. Marsal, one of the big issues here is
25 the separation, the separation among the various Lehman

1 entities around the world. I think it's fair to say that all
2 of the key parties, including the administrators, are eager to
3 work in a consensual fashion along the lines that have been
4 discussed in the course of the status reports today. We've
5 initiated a number of meetings that have been referred to.

6 But, nevertheless, these problems are serious, and
7 they do impact rights. And I mention that because the cash
8 management process impacts those directly. As you might
9 imagine, a system in which entity, which was LBHI, acted as the
10 paymaster and in which payments in the ordinary course of an
11 integrated level entity were directed to that entity, once that
12 terminates there are likely to be some difficulties. And right
13 now, we are in the midst of totally foreseeable difficulties.
14 And all we want to do is to make sure that property rights of
15 LBIE and its customers and its estates are not waived or
16 impaired as a result of the use of a cash management procedure
17 that is gradually being phased out. It would be great if the
18 cash management procedure simply terminated and everyone in the
19 world knew to make payments to the right place the very next
20 day. Unfortunately, that is not realistic nor is it what
21 happens.

22 The administrators have taken diligent steps to
23 notify parties to transactions to send cash to them but, not
24 surprisingly, that hasn't happened in every case. And so all
25 we would like for this order to reflect is that property of LBI

1 (sic) that enters into this cash management system --

2 THE COURT: You mean LBIE?

3 MR. FLICS: LBIE. Thank you very much, Your Honor.

4 That property of LBIE that is sent to the LBHI accounts,
5 pursuant to prior instructions from parties that either didn't
6 receive or ignored the directions from the administrator, is
7 returned to LBIE as their rightful property.

8 Now, that requires a process of identification.
9 We're not asking the debtors to guess at it, but we are meeting
10 with them, we are providing information. And it just seems to
11 me that rather than run the risk of significant amounts of
12 money, we're talking about billion and more, being waived or
13 commingled or sent along to third parties that we can work with
14 the debtor and get some recognition and statement in this order
15 that those funds will be segregated, they will not be
16 commingled and that they will be returned.

17 THE COURT: Well, look, everybody in this case, Mr.
18 Flics is obviously supersensitive about reserving their rights
19 and not waiving anything, and I fully appreciate the reason
20 that you're speaking to this issue now. But I'm reminded of
21 the statements that were made in the course of the status
22 conference this morning in which at least I heard both Mr.
23 Miller and Mr. Marsal indicate that efforts were underway to
24 develop some kind of working protocol that would protect the
25 interests of LBIE to the extent that there's property that ends

1 up in the LBHI estate and vice versa. To the extent that
2 there's LBHI money that's subject to the jurisdiction of your
3 clients, they have a claim to it too. So I supposed it's a
4 two-way street. I don't know that it belongs in the cash
5 management order. Maybe it belongs in some other order.

6 MR. FLICS: Well, Your Honor, that might be right.
7 The placement in a particular order of course is not important,
8 and we --

9 THE COURT: All I'm saying is every -- I'm not being
10 critical at all. Every contest matter becomes an opportunity
11 for every sensitive player to get up and say we want to be
12 protected here to. And I just think probably once to be fully
13 protected is enough.

14 MR. FLICS: Well, with all respect, Your Honor,
15 this --

16 THE COURT: This is an important order; I recognize
17 that.

18 MR. FLICS: -- this motion goes directly to the issue
19 that I mentioned. It's not another order in which we'd like to
20 argue for the usual reservation. This is very important
21 because it is this cash management procedure that hasn't been
22 in place for a long time that is contributing to this issue
23 that is happening today. We are willing and eager to work with
24 Mr. Miller, with Mr. Marsal. We suggested the meeting that was
25 referred today. We suggested the meeting that will hopefully

1 occur later today with the LBI trustee.

2 THE COURT: Has there been any effort to work out
3 some simple language to incorporate in this order that
4 satisfies you?

5 MR. FLICS: We have requested that there be a
6 segregation of assets in which LBI has an interest, and we've
7 been told no.

8 THE COURT: LBIE?

9 MR. FLICS: LBIE. Thank you again, Your Honor. And
10 we've been told no, not in this order. Frankly, I don't
11 understand that. We do want to work for it but we have an
12 existing order today and cash coming in today and every day.

13 So I will commit us, as I have in the past, in the
14 last few weeks, to continue to work with all of those parties
15 towards working out a consensual resolution across borders,
16 whether it's in protocols or otherwise, but we don't want with
17 each passing day real property interests to be waived. Thank
18 you, Your Honor.

19 THE COURT: Okay.

20 MR. MILLER: Your Honor, if I could just respond to
21 that because I have a meeting, and, Your Honor --

22 THE COURT: Please do respond.

23 MR. MILLER: Your Honor, the exact topic that Mr.
24 Flics just raised, that if LBHI received a payment that was
25 mistakenly sent to it and actually belonged to LBIE, would Mr.

1 Marsal return it. And there was discussion about it. Mr.
2 Marsal, and I think I'm quoting him, Your Honor, said, "It's
3 not our property; we're going to give it back to you. However
4 we would like the reciprocal right." At that point, Mr. Jacob
5 said, "Well, I can't do that right now. I've got to go talk to
6 Linklaters in London." Now, reciprocity is very important.
7 That has to be part of the protocol that we hope to enter into.
8 It doesn't have to be in this order, Your Honor.

9 Now, as Mr. Perez pointed out, this is an interim
10 order. It's only going to be for three weeks. We'll be back
11 here on November 5. Otherwise, we're going to have this order
12 with eighteen paragraphs. Every speaker that gets up here,
13 just as Your Honor, wants his particular interest protected.
14 So that is the subject for the protocol, Your Honor.

15 THE COURT: Okay. Mr. Sabin?

16 MR. SABIN: Good afternoon, Your Honor. Jeffrey
17 Sabin on behalf of the Harbinger Funds from Bingham McCutchen.
18 With reference to the proposed draft, amended order, page 3,
19 Your Honor, and I'm now looking at the carryover language at
20 the first decretal paragraph, where there is a mechanism for
21 reporting on cash activities on a weekly basis to the
22 committee. I would suggest under the rule of breakup
23 transparency that many have talked about in this case that
24 since there are at least two websites that I know of, the
25 debtors' and the creditors' committee, that perhaps that weekly

1 reporting that's referred to in clause (i) in that paragraph
2 could be made available on the debtors' website for all to see
3 on cash transfers.

4 And as I deal with cash transfers, I note that on
5 page 5 of this proposed order, the last decretal paragraph, the
6 reporting apparently wouldn't start until the day of this order
7 itself. And one of the things that concerns our client is that
8 the reporting should start from the applicable petition dates
9 of each of the debtors in this case, not from the date that
10 this order is entered. I know that there are ongoing efforts,
11 and I know that those efforts have to date and will in the
12 future take much effort to report, but I would imagine that
13 under the rules and under the law all cash transactions must be
14 accounted for, not only between debtors but between debtors and
15 nondebtors.

16 My next point, Your Honor, is back on page 3, the
17 last decretal paragraph, where apparently it is contemplated
18 that one or more of these debtors will use and/or fund a bank
19 account that they do not own or control. In this case, a bank
20 account that is controlled by the SIPA trustee, i.e., of Lehman
21 Brothers Inc., and secondarily and/or of Barclays Capital. If
22 that indeed is the case and monies of these debtors will flow
23 through those accounts, either by funding and directly, I would
24 hope that those monies would not be subject to setoff rights or
25 other rights of the SIPA trustee and/or Barclays Capital so

1 that they would otherwise not be trapped.

2 As to paragraph 5 itself, that deals with reasonable
3 efforts. Harbinger adopts the comments made by comments for
4 the ad hoc committee but notes two other things, and that is
5 instead of necessarily imposing the will of any individual
6 creditors, perhaps once again under the concept of
7 transparency, transactions above twenty-five million could be
8 posted as proposed transactions on a website so that not only
9 would the creditors' committee, in essence, under its protocol
10 have rights, but if any individual creditor wanted to object it
11 had advanced prior notice and could do so and bring it to this
12 Court's attention. Thank you, Your Honor.

13 THE COURT: Okay. Thank you.

14 MS. CHAPMAN: Good afternoon, Your Honor. Shelley
15 Chapman, Willkie Farr & Gallagher for Fir Tree and Quantum.
16 Your Honor, I'll be brief. We are one of the parties, I think,
17 that you've now referred to as the "earmarked parties". We did
18 submit an objection in which we raised the constructive trust
19 argument. I did have an opportunity --

20 THE COURT: I mean no offense by that. It's --

21 MS. CHAPMAN: I understand, Your Honor, and --

22 THE COURT: -- a well-established practice in
23 Washington.

24 MS. CHAPMAN: Yes, and I take none, Your Honor. I'm
25 simply using it as a shorthand to describe my position. I did

1 speak to Mr. Perez and suggested one of two fixes: either that
2 my clients be named specifically in the order or, as Your Honor
3 suggested, there might be some generic language that could be
4 included in the order to generally make the point that from the
5 entry of this order forward no party who at that moment has
6 constructive trust remedies, rights will be diminished or
7 otherwise affected by the entry of the order. It's a simple
8 concept. I don't think we're trying to enlarge anyone's
9 rights. We've taken great comfort in listening to Mr. Miller's
10 representations this morning and Mr. Marsal's as well. Thank
11 you.

12 THE COURT: Fine. Thank you, Ms. Chapman.

13 MS. WEISSMANN: Good afternoon, Your Honor. Beverly
14 Weissmann on behalf Federal Home Loan Bank of Pittsburgh. We
15 actually echo the comments of Fir Tree in terms of the issues
16 as to the order. I briefly glanced at the order. I don't
17 think it needs to be specific as to each party but I don't
18 think it goes far enough to reserve the rights of parties and
19 property in a constructive trust. And we would echo the
20 comments that this order needs to specifically provide that to
21 the extent LBHI had monies that didn't belong to them, that as
22 those get disbursed out down the road, now or in the future,
23 that that doesn't create an issue with respect to parties'
24 rights in the constructive issue. It really does need to be
25 addressed because as they mentioned this morning, there are a

1 lot of counterparties, there was a lot of collateral that
2 didn't belong to this debtor, didn't belong to LBSF, didn't
3 belong to Lehman Brothers Holdings Inc. And in that instance,
4 if it gets swept into a cash management order and we're down
5 the road six months or one year, no party wants to be in a
6 position where they say well, gosh, you know, we didn't
7 preserve your right with respect to the property that you owned
8 and those funds are dissipated.

9 So we would respectfully request that this Court puts
10 some language in the order to protect all of the parties'
11 rights vis-a-vis constructive trust, as suggested by Fir Tree.

12 THE COURT: Okay. I mean, I think there's a common
13 theme here, and when we're done with everybody's comments I
14 think it would be useful to hear from Mr. Perez again as to
15 whether or not there is a way for the debtor to act as the
16 principal drafter of some language that might satisfy the needs
17 of -- the legitimate needs of those parties who have expressed
18 their concerns about the impact of the order this afternoon.

19 Mr. Montgomery?

20 MR. MONTGOMERY: Good afternoon, Your Honor. Claude
21 Montgomery, Salans. We represent two of the named banks in the
22 cash collateral order: Swedbank AB and Svenska Handelsbanken
23 AB. We have not filed an objection because we have an
24 agreement with debtors' counsel that was reflected in the order
25 in all but one respect. And I believe Mr. Perez is prepared to

1 read on the record that we have the last issue also resolved,
2 which is that this order does not -- the failure of the two
3 banks to object does not constitute a waiver of any cash
4 collateral rights that the banks may have.

5 MR. PEREZ: Your Honor, I'm prepared to do that. I
6 have the language.

7 THE COURT: Sounds like he just did it.

8 MR. MONTGOMERY: Thank you.

9 THE COURT: And if he has language as is acceptable
10 to you, I don't need to hear it.

11 MR. LAGUARDIA: Your Honor, Daniel Laguardia,
12 Shearman & Sterling, for Bank of America. I don't have to
13 repeat everything that's been said. We are a party that has
14 claims against the collateral. We have a constructive trust
15 claim, among others. I don't think this order is intended to
16 affect anybody's legal rights or claims, and I think it's
17 important that there be language in the order providing that.

18 MS. MATZAT: Good afternoon, Your Honor. Rosanne
19 Matzat of Hahn and Hessen, on behalf of Powerex Corporation and
20 Avista Corporation. I guess I could sum it up by saying ditto,
21 Your Honor, on the last several objections that were made. We,
22 too, are a party who have been seeking to track down and get a
23 handle on where our collateral is. We are concerned that it
24 gets transferred somewhere else in a superpriority
25 administration claim is not enough to compensate us or to

1 preserve those rights.

2 So our papers are of record, and we would like to be
3 considered in connection with any constructive trust type of
4 language that is put together. Thank you.

5 THE COURT: Fine. Mr. Perez, I think it's your turn.

6 MR. PEREZ: Yes, Your Honor. Your Honor, I think
7 there's a quick fix, and if you'd look at paragraph 5 of the
8 order --

9 THE COURT: Just so we're looking at the right
10 paragraph --

11 MR. PEREZ: The first "Ordered" paragraph.

12 THE COURT: The paragraphs are not numbered.

13 MR. PEREZ: I apologize, Your Honor. It's the
14 highlighted paragraph in the middle of the page.

15 THE COURT: In the middle of page 5 --

16 MR. PEREZ: 5.

17 THE COURT: -- or the middle of page 3?

18 MR. PEREZ: Middle of page 5, Your Honor.

19 THE COURT: Okay.

20 MR. PEREZ: I apologize. All right. Your Honor,
21 this was actually put in at the request of the gentleman that
22 represents Bank of America and several other ones, which says
23 "Nothing in the order shall be deemed to affect any parties'
24 otherwise valid setoff." And then we also -- they requested to
25 insert recoupment, which we will, or the rights to seek to

1 impose a constructive trust under applicable law. I think we
2 could insert that in there, and I think that would preserve the
3 parties' rights.

4 Then it goes on, "valid netting agreements under
5 applicable law or under applicable laws to impose an
6 administrative freeze on any bank account or nothing herein
7 shall affect any bank's actions to exercise any valid rights of
8 the debtors to assert" -- "or any of the rights of the debtors
9 to assert that the purported right is improper". I think if we
10 just add the constructive trust language in there, I think that
11 should fix it.

12 THE COURT: It probably does work but others may have
13 a different view, and we'll see if it satisfies them. And by
14 the way, there are also --

15 MR. FLICS: Your Honor, not quite all the way.

16 THE COURT: But I actually wasn't quite finished
17 myself.

18 MR. FLICS: Oh, I'm sorry, Your Honor.

19 THE COURT: That's fine. I was also going to comment
20 that that's only one of the things that a lot of people talked
21 about. And while I think that may be sufficient to satisfy the
22 arguments made with respect to preservation of rights to assert
23 a constructive trust, there were parties who raised a whole
24 litany of other miscellaneous comments regarding the order.
25 And it occurs to me that this hearing should not be converted

1 into a drafting session, at least not with me on the bench. So
2 I'm going to hear what else anybody has to say and make the
3 suggestion that I think an interim order authorizing the
4 debtors to have some kind of comprehensive system for cash
5 management is necessary and appropriate and should be entered
6 as promptly as possible.

7 I would note, however, that this is an enterprise
8 that has functioned without such an order for the last month.
9 And if it takes another day to get an order that satisfies all
10 the objectors and that also meets the debtors' needs, some time
11 spent drafting may be time well spent. I'll hear from Mr.
12 Flics.

13 MR. FLICS: Your Honor, with that, I have no further
14 comment. We're happy to participate in any further drafting
15 exercise to satisfy us. Thank you, Your Honor.

16 THE COURT: I just think that's a reasonable way for
17 us to approach this, particularly since there are a lot of
18 lawyers in the room and I'm confident somebody in the room has
19 thought of something I haven't thought of, and that it makes
20 some sense for people who are not in a crowded courtroom to get
21 together and pause and reflect about what the language says and
22 what negative pregnancy, I think was the term used, what
23 possible traps for the unwary may innocently be placed in our
24 midst as a result of late-night drafting sessions. So it's
25 probably a good idea for the parties to spend a little bit of

1 time to get it right.

2 That said, I'm also confident that there are some
3 positions that have been expressed that the debtor may not
4 agree with or that the committee may not agree with,
5 particularly to the extent, and I mean no offense, Mr. Sabin,
6 that you've asked to sort of have a public showing of certain
7 of this information. That may be fine; it may not be fine. I
8 have no idea. I leave it to the parties to decide what works
9 in the context of this case.

10 But I would like it to be very clear I believe that a
11 cash management system order is appropriate and should be
12 entered without delay. And I also believe that the parties
13 should exercise their reasonable best efforts later today or
14 early tomorrow so that we could enter the order before the end
15 of the week.

16 MR. PEREZ: Thank you, Your Honor. Your Honor, if I
17 could just go back to Eagle for one minute --

18 THE COURT: Yes, it's a good --

19 MR. PEREZ: -- because we were waiting on Eagle.

20 THE COURT: And let me tie together my own thinking
21 with respect to this form of order and Eagle. I'd like the
22 parties who have objected to the Eagle transaction and have
23 insisted, for these purposes, that there be a segregation or
24 escrow arrangement for those proceeds to comment as to why the
25 same kind of protection that's available in the cash management

1 procedure shouldn't be adequate for purposes of the Eagle
2 transaction because it seems to me that these are related
3 issues.

4 MR. O'NEILL: Sorry, Your Honor. I'll take a stab at
5 it. The --

6 THE COURT: State your name for the record.

7 MR. O'NEILL: I'm sorry. Brad O'Neill, Kramer,
8 Levin, on behalf of BONY Mellon as indenture trustee. We would
9 argue essentially that the determination of whether or not
10 there's a proper administrative claim -- there's been no sort
11 of independent fiduciary acting on behalf of the commodities'
12 creditors who's vetted the transaction, or at least there's no
13 evidence that anyone has vetted the transaction. Essentially,
14 you have Holdings on both sides of the transaction determining
15 whether or not there's really a claim here, and we're being
16 asked to take an administrative claim on that basis. It
17 exposes us in a way that potentially others are not exposed.
18 Having said that, however, I hear what you're saying on cash
19 management. So --

20 THE COURT: Okay.

21 MR. MUNSCH: Your Honor, Russ Munsch on behalf of the
22 ad hoc committee of bondholders. I guess, in response to your
23 inquiry, this is a rather unique motion that's been filed by
24 the debtor, and that is seeking to sell partnership interests
25 which are actually -- in Eagle, which are owned by fourth and

1 fifth-tier subsidiaries. In addition, the motion seeks to do a
2 compromise of claims among LBCS, LBHI, claims they had against
3 Eagle, where we don't have, as counsel for Bank of New York
4 points out, we don't have an independent fiduciary. They
5 obviously sat down and did a compromise, but who are they
6 compromising with? Themselves?

7 And that's the concern we have at this point. We
8 don't have enough information. We're not asking the Court to
9 make a determination of that today or recharacterize it.

10 THE COURT: How much time do you think is necessary
11 to make this determination?

12 MR. MUNSCH: Your Honor --

13 THE COURT: It seems to me that one of the risks
14 associated with the position that you've taken and that the
15 Bank of New York, as trustee, has taken in this is that, and
16 I've lived through this in the past, money is escrowed and it
17 just doesn't come out; it just stays there indefinitely as
18 parties continue to argue. And the fact of the escrow becomes
19 one of the points of the negotiation. So it does affect
20 outcomes, and I think that that's why you want it. I'm
21 guessing.

22 MR. MUNSCH: Not essentially, Your Honor, but we're
23 willing to work with the debtors' schedule. If they will
24 provide us the information, give us a reasonable period of time
25 to review that, and if we have some claims to that, we would

1 make them to the Court within a finite period of time. That
2 could be done 90 to 120 days as long -- as once we get the
3 information from the debtor. We're not asking for some
4 inappropriate length of time to hold the funds in escrow.

5 So I think there's -- all we're simply saying is give
6 us the information that backs up these claims, what's the basis
7 of them, whether they were equity, whether they're actual debt.
8 Give us an opportunity to look at that, and if we have claims
9 we'll come back to this Court and assert those claims. The
10 Court can make a determination of it. And if the Court
11 determines that it was a proper and valid debt claim, the
12 escrow will be released.

13 THE COURT: Well, it sounds as good as you say it,
14 but I have a feeling, in practice, it's not going to be quite
15 that simple.

16 MR. MUNSCH: Your Honor, we're willing to put it at
17 the debtor's timetable. If the debtor will get the information
18 to us, we'll proceed quickly.

19 THE COURT: All right. I hear your argument. I'd
20 like to hear what Mr. Perez has to say about that. And Mr.
21 Etkin is standing by having made his deal a while ago and sort
22 of watching all this from the sidelines.

23 MR. PEREZ: Your Honor, we reviewed the three
24 objections. We tried to address them in what we thought was a
25 fair and equitable fashion. I don't believe that providing for

1 a total reservation of rights and a -- basically what will
2 amount to a superpriority administrative claim to the extent
3 that those monies were either mischaracterized or improperly
4 allocated, that that doesn't support them. And I think the
5 Court's absolutely correct: It's going to be a matter of where
6 is the leverage. And the fact that creating an escrow changes
7 the leverage.

8 But, Your Honor, this is not a situation where we're
9 going out there, and it's not an insider deal. The committee
10 has looked at this. We've spent a lot of time trying to make
11 sure that this gets done. It's being sold to a third party, a
12 totally unrelated third party, Your Honor. And so it's a
13 transaction that -- nobody's saying that we shouldn't do the
14 transaction. It's really just what happens --

15 THE COURT: This is about protecting the rights of
16 those parties who have claims against one entity, Lehman
17 Brothers Commodities Services Inc. --

18 MR. PEREZ: Correct.

19 THE COURT: -- which, pursuant to a note transaction
20 that some parties say they don't fully understand, will be, in
21 effect, transferring the funds, or the funds will go directly
22 to LBHI. Is that correct?

23 MR. PEREZ: Yes, Your Honor. LBHI has a note --

24 THE COURT: That's the note I was referring to.

25 MR. PEREZ: -- that's going to be sold to the

1 purchaser for 230 million dollars, and part of that note will
2 be forgiven. The note is not between LB --

3 THE COURT: Okay.

4 MR. PEREZ: It's between LBHI and the debtor -- and,
5 I'm sorry, and Eagle. And, Your Honor, I don't think that a
6 superpriority administrative expense claim in this case is --
7 in LBHI is going to be something hollow. I mean, there is -- I
8 mean, you've heard the testimony -- I mean, you've heard how
9 much cash there is in the estate. So it's not a situation
10 where tomorrow the money is going to fly away. I mean, there
11 is going to be money there, and to the extent that they can
12 either prove it was mischaracterized or there should be a
13 different allocation, they will enjoy that claim.

14 THE COURT: Okay. Well, is there anyone else who
15 wishes to be heard on this? Now, Mr. Etkin is reconsidering
16 his willingness to make a deal.

17 MR. ETKIN: No, I'm not, Your Honor. No, I'm not,
18 but what concerns me, Your Honor, about what I've heard in
19 terms of suggestions from the other objectors is placing some
20 artificial timetable on when this needs to get done in case
21 that's extraordinarily complex, in a case where the debtor and
22 their professionals are still trying to get their arms around
23 documents, data, etcetera. So while obviously there was always
24 a concern about protection in the event that there should be a
25 different allocation or the claim needs to be recharacterized,

1 I made my case with Mr. Perez with respect to the superpriority
2 administrative claim. And one of the reasons was, I can share
3 with the Court, that I was concerned about some artificial
4 timetable in a case like this of having to get this done within
5 60, 90, 120 days where the data and information may not be
6 available and where events may happen down the road that could
7 impact on the determinations that have been reserved pursuant
8 to the current language. So that's an observation I wanted to
9 share with the Court.

10 THE COURT: Okay. Thanks for that. Is there anyone
11 else who wants to talk about this? Because I think I'm
12 prepared to tell you my thinking in the form a ruling.

13 I believe that the cash management procedures, as
14 they have evolved by virtue of the productive conversations
15 between the creditors' committee and counsel for the debtor,
16 represent a broad-based approach to providing all parties in
17 interest with what I'll term for the purposes adequate
18 protection and that an escrow may be a desirable feature but
19 it's not required. It's not required based upon representation
20 that have been made to the Court in the context of a status
21 conference of billions of dollars being on hand at LBHI.
22 There's no assurance, of course, that the money will stay in
23 that amount because this is an expensive proposition to manage
24 and, no doubt, the money there will be spent for any number of
25 legitimate purposes.

1 But I'm concerned that an escrow arrangement, not
2 just for the reasons articulated by Mr. Etkin, which would be
3 that the parties might be up against a hard-and-fast deadline
4 that could be difficult to deal with in the context of a case
5 that has many competing priorities, but rather by virtue of
6 tying the funds up in what amounts to a special escrow account,
7 this, in effect, transforms the Eagle transaction from
8 virtually any other intercompany transaction in the Lehman
9 family and elevates it to a level that, at least I don't think,
10 it deserves.

11 There's been no showing here whatsoever by the
12 objectors that they are at any risk whatsoever by being bound
13 by the very same superpriority commercial best efforts to get a
14 lien provisions, or however that language may change, in the
15 cash management protocol. And that, to me, seems an
16 appropriate general rule to apply. And the Eagle Energy
17 Partners situation is not to be distinguished from that of
18 other affiliate transactions within the Lehman family. You
19 don't always get what you want, but in this case I think you're
20 getting what you need if you get the cash management order
21 treatment.

22 MR. PEREZ: Thank you, Your Honor. We'll prepare an
23 order and make the changes that I've alluded at the outset.

24 THE COURT: Fine.

25 MR. MILLER: Your Honor, in connection -- Your Honor,

1 in connection with the cash management order, could we have a
2 date for a hearing, if necessary, tomorrow so -- it's always
3 good to have a time pressure for the drafting session.

4 THE COURT: Are you looking for a standby hearing --

5 MR. MILLER: Yes.

6 THE COURT: -- to come back here? Well, you can have
7 5:00 tomorrow.

8 MR. MILLER: Thank you, Your Honor. That leaves two
9 more matters on the calendar, Your Honor: The remainder of the
10 Rule 2004 motions. By my count, Your Honor, motions enjoined
11 is there were fourteen. We have reached accommodation with
12 thirteen of the movants to put those matters over to November
13 5. As I stated before, the open motion, Your Honor, is the
14 motion of net profit -- Newport Global Opportunities Fund LP
15 and its affiliates.

16 MR. MOLTON: Good afternoon, Your Honor. David
17 Molton of Brown Rudnick for Newport/PEP and Provident. Your
18 Honor, we represent clients that have about 330 million dollars
19 in --

20 THE COURT: Can I ask you this --

21 MR. MOLTON: Yes.

22 THE COURT: -- threshold question?

23 MR. MOLTON: Go ahead, Judge.

24 THE COURT: You're obviously perfectly free to be
25 obdurate by why are you not going along with what everybody

1 else has agreed to do, which is putting this off to the 5th?

2 MR. MOLTON: I knew you were going to ask that
3 question, Judge.

4 THE COURT: What's that?

5 MR. MOLTON: I knew you were going to ask that
6 question.

7 THE COURT: Just that way?

8 MR. MOLTON: Just that way. So I'm ready for it. In
9 any event, we're different, and I'll tell you why we're
10 different, Judge. We've limited our discovery, our request,
11 away from the global issues, which are completely legitimate
12 and which we'd love to share and which we encourage the
13 parties, including the OCC, the official committee, and
14 Harbinger and others, to pursue. Those are important
15 questions, and those relate to events that have happened and to
16 history of this case.

17 What we're interested, Judge, is very simple, and
18 we've limited, as you know, our request to where are our
19 securities. That makes us different, and I think it makes it
20 in an important fashion because those securities and where they
21 are will inform us, necessarily inform us, of the rights of
22 where we have to go to seek to protect. You talk about
23 adequate assurance and protecting rights. We need to know
24 where to go to protect those rights. We're not dealing with
25 matters past; we're dealing with possibilities future and now.

1 And that's why we caucused with all the parties during lunch
2 and Mr. Miller. I talked to him, and he graciously invited me
3 to participate in the meeting. But I don't think that that
4 meeting concerning what happened a month ago is going to
5 address the very simple issue of where are securities ago.

6 And that's why we're different, Your Honor. Our
7 papers show that we had secured -- our positions and our
8 accounts were under prime brokerage agreement with all the
9 Lehman entities. I mean, it was with LBIE, but pursuant to the
10 agreement it's with, I guess, the entire universe.

11 We had asked, on 9/12, an issue to direction that we
12 transfer our entire portfolio out of our prime brokerage
13 account and establish a new one at Credit Suisse First Boston.
14 Lehman agreed. They agreed. And they were in the process of
15 pulling whatever securities we had and getting them ready to
16 transfer them over to Credit Suisse First Boston. We received,
17 and I don't need to go through the record Your Honor has read
18 it, but we received confirmation that that was ready to occur.
19 And then what Mr. Miller has appropriate described as the era
20 of perpetual darkness fell, and that fell on --

21 THE COURT: Now he's sorry he used that term.

22 MR. MOLTON: Yes, he is. In any event, but ever
23 since that date, Judge, we don't know where our securities are,
24 and we've outlined in our pleadings our diligent --

25 THE COURT: But --

1 MR. MOLTON: Go ahead, Judge.

2 THE COURT: -- Mr. Molton, you're not unique in this
3 case in having that question. There was an adversary
4 proceeding brought by FBR in the --

5 MR. MOLTON: Correct.

6 THE COURT: -- in the matter involving the SIPC**
7 proceeding. There's been another adversary proceeding brought
8 by the Home Loan Bank of Pittsburg in connection with a similar
9 "protect our underlying asset, wherever it may be" kind of
10 lawsuit. And I don't meant to suggest that you don't have an
11 anxious and deserving client who has charged you with the
12 responsibility of doing everything within your power to get the
13 answers, but you were also here when we all heard Mr. Marsal
14 and Mr. Miller make a lengthy and completely credible
15 presentation as to what the situation is at the debtor. And I
16 don't see how you can get any relief earlier than the period of
17 time when the debtor is in a position to respond to a rational
18 question.

19 MR. MOLTON: Can I answer that? I think I have a few
20 responses to that, Judge. Number one, I believe that the
21 adversary proceeding by Friedman, Billings resulted in a very
22 quick answer: The securities are at Barclays. So I think
23 that's what the response was.

24 THE COURT: Well, I have no idea what the outcome of
25 that --

1 MR. MOLTON: Okay.

2 THE COURT: -- litigation is. I only know that in
3 the context of arguing the TRO, it was asserted that the
4 securities were at Barclays. But because there's a schedule
5 that I believe is the subject of a sealing order, I don't know
6 the answer to that question.

7 MR. MOLTON: Okay. Well, in any event, we heard some
8 interesting things today, Your Honor, that, I think, puts us in
9 a different position in terms of what people know and who may
10 know it as opposed to the forty-five to sixty-day issue, as
11 well as the derivative problem, the problem of getting a handle
12 on derivatives. First of all, we heard from the SIPA
13 representative that they've already identified prime broker
14 accounts at SBI and that they've moved, I guess, I wrote down,
15 I tried to write down, 900 million dollars' worth of primer
16 broker accounts out of the Lehman universe to other brokers in
17 accordance with the SIPA statute. So the bottom line is people
18 know, somebody knows, about prime brokerage accounts and has
19 been moving on it.

20 Number two, the forty-five to sixty days -- and we
21 well understand what's going on at LBHI. We understand the,
22 sort of, challenge they face. But what I heard, Your Honor, is
23 much of that has to do with derivative issues, not with the
24 status or location of cash asset accounts, which we didn't hear
25 about in terms of presenting any problem. Indeed, it would be

1 my recommendation, and that's one thing we're going to be
2 talking to the debtor about as part of their team, is to get
3 some people to deal with this issue.

4 But I also heard Mr. Miller talk about how they've
5 actually undergone some analysis and diligence with respect to
6 the transfers over from England into the United States. So it
7 may be very well that they have this information because that's
8 exactly where our securities would have come from after the era
9 of perpetual darkness fell, or immediately before that.

10 So I think, with all due respect to the struggle that
11 they face, we believe that, and in especially in light of what
12 we've learned today, Your Honor, that these questions can be
13 answered. And with respect to the debtor, and it may --

14 THE COURT: But why do I have to be answered with a
15 204 exam?

16 MR. MOLTON: Well, Your Honor, because, for the
17 reasons we set forth, we are facing imminent harm. We're
18 facing some challenges. In order to -- the identity and
19 location of where securities are is especially important in
20 light of the fact that we read that certain assets are being
21 transferred over in accordance with the SIPA trustee, and I
22 think I read this in the Chase JPMorgan -- JPMorgan Chase
23 response to the creditor committee's 2004 application; two,
24 that certain assets and securities are being transferred to
25 JPMorgan Chase for various purposes. Maybe it's collateral;

1 maybe it's liquidation. As I said earlier, Your Honor, we
2 think we're in a very different situation based on the facts
3 that occurred immediately before the bankruptcy. And needless
4 to say, who has those securities is going to inform us as to
5 what acts we may need to take in order to protect our position.

6 And number two, Your Honor, as we set forth in our
7 pleadings, we have certain voting rights issues. And this,
8 again, impacts innocent people outside of this bankruptcy.
9 We're involved -- we own securities that are involved in
10 restructuring, for which we will need to be able to give voting
11 instructions in order for those restructurings to occur. And
12 if we're -- because we own substantial and majority shares in
13 those companies, and if we're not able to get that done, there
14 may be resultant bankruptcies and problems that go beyond the
15 Lehman universe and affect innocent parties. We have, under
16 our various agreements, the right to request that voting
17 instructions be given to the extent those agreements are still
18 in effect. But we can't do that unless we know where the
19 securities are.

20 So for those two reasons, Your Honor, as well as the
21 reasons I heard today, it would seem that the debtor, at the
22 very least, could certify to us in some fashion whether the
23 securities came over from Europe and if they know that for a
24 fact or they don't, and number two, where they are now or
25 whether they don't know where they are now.

1 We have -- because we had, during our informal
2 attempt over the past month, to find out this information, what
3 we got, Your Honor, is a letter from Mr. Miller saying you're
4 asking the wrong person; you should be asking the SIPA trustee
5 or you should be asking the person in England. But Mr.
6 Miller's letter was very helpful but it didn't say we know
7 they're not with us. And that's what we need, Your Honor.

8 And we also have asked the SIPA trustee, on -- I
9 think it was October 9th, and followed up: Please advise us.
10 We've received no response from that, and what we're doing in
11 light of where we've come and in light of what Mr. Miller told
12 us in his letter is we filed yesterday, I believe, a 2004
13 application in the SIPA proceeding, that's going to be on
14 November 5th, on this very issue.

15 So what we're looking for, Your Honor -- we're
16 different. We're the only one here --

17 THE COURT: I'm sorry. What is coming up on November
18 5th in the SIPA proceeding?

19 MR. MOLTON: We filed a 2004 in that proceeding last
20 night.

21 THE COURT: Why should I be hearing a 2004 for you in
22 the LBHI case today when you're going to be presenting one on
23 the 5th and you didn't defer to the 5th? It would have been
24 perfectly logical to defer both so that they could be heard on
25 the same day.

1 MR. MOLTON: Your Honor --

2 THE COURT: I'm missing something here.

3 MR. MOLTON: -- because to the extent that the debtor
4 has the ability to tell us today --

5 THE COURT: But you don't need a 2004 to get an
6 answer to the question. Obviously, you've been trying, without
7 success, to get that answer, but you've also been present in
8 court when, I think, very credible statements have been made as
9 to the administrative burdens of this estate, the efforts of
10 Mr. Marsal and his staff to deal with the multiplicity of
11 problems that confront the estate. And, of course, you're
12 shooting one of the rifle bullets at a debtor that is being
13 shot at 360 degrees, 24/7, all day long, all week long, all
14 night long. I understand your desire to get the answer to your
15 question, and by being persistent you may ultimately get it,
16 but you're not going to get it today because I'm not giving the
17 relief today.

18 MR. MOLTON: Judge --

19 THE COURT: I think it's, frankly, unreasonable on
20 your part to be the one holdout, particularly when you've just
21 told me that you're going to be in court on the 5th on the same
22 issue.

23 MR. MOLTON: Well --

24 THE COURT: I'm astounded, frankly, that you didn't
25 agree to put it off to the 5th. Talk about judicial economy;

1 this is judicial ineconomy for you to be pressing this now. I
2 don't get it.

3 MR. MOLTON: Judge --

4 THE COURT: I heard the argument; I don't buy it.
5 And I'm not granting the relief. Have you heard enough?

6 MR. MOLTON: Yes, Your Honor.

7 THE COURT: Fine.

8 MR. MOLTON: Thank you.

9 MR. MILLER: I elect not to say anything, Your Honor.
10 I think we can move on, Your Honor, to the next matter on the
11 calendar, which is the proposed sale of the investor management
12 division. Ms. Fife will be hearing that, Your Honor.

13 THE COURT: Let me just ask a question before we get
14 into this because I have a sense based upon the brief that I
15 saw over the lunch hour, which was an omnibus response of the
16 debtors to the various objections, that this is a very live and
17 actively contested matter, unless you've been able to achieve
18 the whole bunch of positive changes in the landscape between
19 lunch and now. Have you?

20 MS. FIFE: Yes, Your Honor. We have reached an
21 agreement with the creditors' committee. So that is one
22 objection that has been resolved. The other objections are
23 still unresolved.

24 THE COURT: I'm going to make this suggestion. We've
25 been going at it now for about two hours. I personally could

1 use a break, and I think that I'm not alone in that. The room
2 is warm, and I think we can all benefit from a stretch. And
3 I'm going to suggest that if this is going to be, as I'm
4 expecting, an actively litigated and important matter, that we
5 take a twenty-minute break and resume at ten minutes to 5.

6 MS. FIFE: Okay. Thank you, Your Honor.

7 THE COURT: We're adjourned.

8 (Recess from 4:34 p.m. until 5:59 p.m.)

9 THE COURT: Be seated, please.

10 MS. FIFE: Good evening, Your Honor. Lori Fife from
11 Weil Gotshal & Manges on behalf of the debtors. First of all,
12 I'd like to thank Your Honor for giving us the opportunity to
13 have some discussions among the parties. We recognize the
14 lateness of the hour but I am happy to report that we were able
15 to make significant progress --

16 THE COURT: Wonderful.

17 MS. FIFE: -- with respect to the last thing on
18 today's agenda which is the debtors' motion to establish
19 bidding procedures in connection with the sale of the IMD
20 business which is investment management division. And just by
21 way of background, Your Honor, IMD provides customized
22 investment management services for high net worth clients,
23 mutual funds and other institutional investors. And it also
24 serves as a general partner for private equity and investment
25 partnerships and has minority stakes and also investment

1 managers. IMD encompasses Neuberger Berman for which it's very
2 well known and also Lehman Brothers Asset Management and the
3 Alternative Investment Group. Not to be outdone by my
4 partners, we made a chart for Your Honor and this one's in
5 color.

6 THE COURT: That's a very colorful chart.

7 MS. FIFE: Yes, it is.

8 THE COURT: I can see it from here.

9 MS. FIFE: So if I may, I'd like to approach, Your
10 Honor.

11 THE COURT: Oh, please. Looks great. Do you have
12 competing technical departments within the firm?

13 MS. FIFE: Yes.

14 MR. MILLER: We are the low end, Your Honor. She's
15 the high end.

16 MS. FIFE: And I was going to say, I hope you'll find
17 that I won.

18 MR. MILLER: It could have been the associates.

19 MS. FIFE: Oh, yes. And I have great associate help,
20 too. But, in any event, this chart is really just a summary
21 and does not take into account the size of the business and the
22 number of partnerships and LLCs that exist under these boxes.
23 But as you can see, it's essentially a fixed income business
24 and then a mortgage opportunity business, hedge funds, private
25 equity funds and then there's also some business in Asia and

1 Europe.

2 Given the lateness in the hour, I can proceed in a
3 number of different ways. I obviously could go through the
4 motion and --

5 THE COURT: But let me first ask whether or not the
6 product of your off the record discussions is a consensual
7 resolution --

8 MS. FIFE: Right.

9 THE COURT: -- or whether there are still some
10 outstanding objections --

11 MS. FIFE: Right.

12 THE COURT: -- that need to be resolved.

13 MS. FIFE: That's what I was going to suggest that
14 perhaps I go through the objections generally first. There
15 were eleven objections that were filed. The creditors'
16 committee objection has been resolved and the informal
17 noteholder group, otherwise known as the ad hoc committee, was
18 also --

19 THE COURT: Nice shot.

20 MS. FIFE: Yeah. I never give up an opportunity.
21 Was also resolved during the break, Your Honor. So those two
22 are resolved. Thomson Reuter is withdrawing their objection in
23 light of the reply that we filed. So that leaves Carlyle which
24 is a bidder. And then six parties who have expressed concern
25 regarding their particular contracts. And as we stated in our

1 reply, the issues that those parties raised really relate to
2 getting notice as to whether the purchaser is going to assume
3 or reject their contract. And pursuant to Section 2.5 of the
4 purchase agreement, we do provide that the purchaser will
5 provide notice of the assumption and assignment. We will send
6 out notices to all parties to contracts. They will have an
7 opportunity to object. And we will also send out cure amounts
8 and they can object to that as well. There is one other
9 objection; I think it's the Korea Investment objector and they
10 wanted to know whether their assets were part of this sale and
11 they are not. So if you put aside the objectors dealing with
12 their contracts and the one on the asset, that basically leaves
13 Carlyle and Crossroads or Crossmark that are unresolved.

14 So, Your Honor, it may be helpful if I tell you the
15 resolution between the company and the committee and the
16 informal noteholders. I can do that. I also was prepared to
17 proffer Mr. Ridings from Lazard. He has been involved with the
18 sale process and could provide testimony regarding that and
19 also the breakup fee and reimbursement amounts.

20 THE COURT: Okay. I think I'd like to first hear the
21 resolution of the objections filed by the committee and what
22 I'm going to call charitably the noteholders group.

23 MR. QURESHI: Thank you, Your Honor.

24 THE COURT: You're welcome. That's what you call
25 yourselves and that's what I'm going to call you. Just because

1 you're called a group doesn't mean you're not a committee. Nor
2 do I consider it to be a significant distinction between the
3 two although that's not presently before me.

4 The objections of both the committee and the
5 noteholder group I viewed as significant and, as I read them,
6 troublesome. So I'm very pleased to hear that there has been a
7 resolution because had there not been a resolution, I don't
8 know how we would have been able to move forward this evening.

9 MS. FIFE: Yes, Your Honor. I understand your
10 concern. In light of those issues, the parties have agreed to
11 the following terms. The seller termination fee, which is the
12 breakup fee, will be reduced from seventy million to 52.5
13 million. Reimbursable expenses which in the agreement were an
14 amount up to thirty-five million dollars has now been revised
15 to be the reasonable customary documented out of pocket
16 expenses. So they will only be actual expenses.

17 THE COURT: And uncapped.

18 MS. FIFE: And uncapped. Only reimbursement expenses
19 that have actually been incurred through the date of the
20 auction will count towards the initial overbid amount. So
21 there was a concern that the full thirty-five million dollars
22 would count against the initial overbid and that's been
23 clarified.

24 THE COURT: And both will be available for credit
25 bidding purposes?

1 MS. FIFE: Yes.

2 THE COURT: The initial overbid amount has been
3 reduced from fifty million to twenty-five million. And the
4 bidding increments have been reduced from twenty-five million
5 to five million.

6 In addition, there was a provision in the purchase
7 agreement that permitted the purchaser to become the starting
8 bidder if it bid an additional one million amount over the
9 highest bid. And that provision has been removed completely
10 from the agreement.

11 The bidding procedures will be modified to allow the
12 committee for extensive consultation rights. That was always
13 our intention anyway, Your Honor, so that's certainly not a
14 problem. The bidding procedures will be modified to allow
15 expressly for joint bids and bids by management, management
16 buyouts and to require debtors to provide full access to
17 information including access to management, the portfolio
18 managers and also access to management compensation and
19 incentive plans proposed by the purchaser in each case to other
20 interested bidders. So what's intended, which, frankly, was
21 always intended, was a full open and transparent auction.

22 In addition, there was a provision in the original
23 agreement which enabled the purchaser to direct the debtors to
24 cause the filing of certain subsidiaries into bankruptcy prior
25 to the closing of the auction. And that would include that we

1 would have to put certain entities into bankruptcy without
2 really knowing that this purchaser was the highest bidder. The
3 purchaser has agreed to change that provision such that only
4 the highest bidder, the successful bidder at the auction, will
5 have the right subsequent to the auction to direct or consult
6 with us in putting entities into bankruptcy. And, Your Honor,
7 we recognize that we have fiduciary duties in terms of making
8 the decision whether to put companies into Chapter 11 and will
9 exercise those. But this is -- at the time, we will look at
10 those duties in the context of trying to, I guess, exercise the
11 rights and obligations under the purchase agreement.

12 THE COURT: Are each of the subsidiaries that are
13 within the class that might be subject to this bankruptcy call
14 right, if I can call it that --

15 MS. FIFE: Right.

16 THE COURT: -- governed by a board of directors that
17 is the same as or different from the board that was described
18 in this morning's status conference? Are the directors the
19 same or do they have special purpose directors?

20 MS. FIFE: Certain of the companies have their own
21 directors. And then others are Mr. Alvarez and his colleagues.

22 THE COURT: I don't want to get into the
23 micromanagement of this issue but it seems to me that it's an
24 issue of governance. And that I assume the parties have
25 thought about this and we're not going to resolve it on this

1 colloquy. So --

2 MS. FIFE: Well --

3 THE COURT: -- I'll simply note that I think it's a
4 troublesome issue.

5 MS. FIFE: Right. Well, Your Honor, we are hopeful
6 that it will not be necessary to put these companies into
7 Chapter 11 and instead that this sale will constitute sales of
8 stock instead of access. That would certainly alleviate the
9 governance issue. But if we do then we will seriously consider
10 those issues.

11 THE COURT: How many affiliates or subsidiaries are
12 in the zone of possibly being brought into a proceeding in
13 order to affect the transaction?

14 MS. FIFE: A lot. I mean, could be up to a hundred.

15 THE COURT: I'm surprised that it's that many.

16 MS. FIFE: I think it's likely to be a hundred. Oh,
17 okay. Sorry. It's likely to be a handful.

18 THE COURT: A handful? That's better than a hundred.

19 MS. FIFE: That's a big change from what we had heard
20 in the past. But I'm glad to hear it. Okay. Great. Moving
21 right along. You learn something new every day, Your Honor.

22 THE COURT: Me, too.

23 MS. FIFE: So, the auction will take place -- one of
24 the other changes that were made in connection with this filing
25 was that we shortened the auction period. Everybody agreed

1 that sixty days was a very long period of time and wasn't
2 really necessary given the fact that these assets had been
3 already diligenced prior to the petition and there are many
4 entities who have expressed an interest already. So, we have
5 shortened the diligence period to forty-five days such that the
6 auction will take place forty-five days from today. And then
7 the sale hearing would be held sixty to sixty-five days
8 thereafter. With those changes, the informal noteholders, as I
9 said, agrees to withdraw its objection and the creditors'
10 committee withdraws its objection. One thing that the
11 purchaser would like to make clear on the record is that
12 regardless of when the order actually gets entered, they would
13 like to fix the amount of the S&P as of today so that there's,
14 I guess, no risk of the market dropping a lot tomorrow or, I
15 believe, they're actually buying a hedge on the market. So
16 they're going to -- we're going to agree that the S&P amount is
17 today's amount.

18 THE COURT: I saw referenced to this issue in a
19 number of objections and noted the risk that the actual
20 realization to the estate might be materially reduced as a
21 result of a degradation of that index between now and closing.
22 What does today's number mean in terms of a price adjustment,
23 if any?

24 MS. FIFE: Well, the way the S&P adjustment works is
25 that it's the difference between the S&P today, if we fix it

1 today, versus the S&P as of closing. That amount is adjusted,
2 I believe. No? Oh, from execution to --

3 THE COURT: I don't think that's the right way to do
4 it.

5 MS. FIFE: Yes. No, it's not.

6 THE COURT: If you want to confer, that's fine.

7 MS. FIFE: One second. Excuse me.

8 THE COURT: But for record purposes, Mr. Ridings, I
9 think you should either say it on the record or whisper.

10 MR. RIDINGS: Your Honor, Barry Ridings at Lazard.
11 It's the difference from when we sign the contract when the S&P
12 was 1202 to whatever it is at closing. Today it's about 940.
13 So there's been degradation since we signed the contract.
14 That's not right?

15 THE COURT: Well, you haven't --

16 MR. RIDINGS: I thought that was right. Excuse me,
17 Your Honor.

18 THE COURT: Mr. Ridings, why don't the two of you
19 talk?

20 (Pause)

21 MR. ROSE: Your Honor, Alfred Rose. I'm at Ropes &
22 Gray and represent Ben Capital, one of the investors in the
23 stalking horse bid. There are two S&P features in the
24 agreement. One is a closing condition. And that condition
25 required that the S&P index be at the closing date, or during

1 the short window of time before the closing date, at least
2 seventy-five percent of where it was when this agreement was
3 signed. In addition, there's a purchaser price adjustment that
4 relates to the S&P index --

5 THE COURT: Which one is being hedged?

6 MR. ROSE: The purchase price adjustment. And that
7 takes two snapshots. It takes a snapshot from the date the
8 agreement was signed through today. And then it takes a second
9 snapshot from the date the agreement was signed through an
10 average shortly before the closing date. It compares those two
11 snapshots and whichever is smaller is taken as a purchase price
12 adjustment by multiplying that degradation by a multiple that
13 reflects the revenue run rate that one would expect to value
14 the decline in the revenues that will be thrown off by the
15 assets under management.

16 THE COURT: So the risk of -- let me just make
17 something clear in my own mind. To what extent does the
18 protection that's being purchased with respect to this variable
19 benefit the estate, if at all? Explain that to me.

20 MR. ROSE: The estate bargained for a certainty of
21 closing. The transaction could have been structured with a
22 fixed price but with a hair trigger that would have allowed the
23 purchaser to walk away from the transaction if the market
24 declined a small increment.

25 THE COURT: So does this eliminate the walk-away risk

1 associated with this?

2 MR. ROSE: No. There is a right for the purchaser
3 not to close if at the time all conditions are satisfied this
4 one -- the S&P 500 has declined more than twenty-five percent.
5 The purchaser is obligated to remain bound by the agreement
6 through June 30, 2009 so that if all conditions but this one
7 are satisfied, and this one is not satisfied, the purchaser
8 does not have the right to walk from the contract. Instead,
9 it's required to wait and see if this condition becomes
10 satisfied at any point prior to June 30, 2009. And if it
11 satisfied then the purchaser would be required to close.

12 THE COURT: I've heard what you've said. I'm not
13 sure I've understood it all but, yes, I've heard it.

14 MR. ROSE: Thank you, Your Honor.

15 THE COURT: Let me ask you this question --

16 MS. FIFE: Yes.

17 THE COURT: -- Ms. Fife. I don't need to wrap my
18 mind around this -- at least fully wrap my mind around this
19 important issue of how the price might be adjusted or how the
20 purchaser's closing obligation might be affected by this
21 somewhat subtle change. For purposes of today, however, do I
22 understand that this adjustment is an agreed change in the
23 underlying transaction or does it have an impact on the bid
24 procedures themselves.

25 MS. FIFE: No.

1 THE COURT: It's the underlying transaction?

2 MS. FIFE: Correct. But it's not even a change. I
3 don't view it as a change. The date would either be today if
4 the hearing had ended earlier in the day or it would be
5 tomorrow when the order is actually entered. And we have
6 agreed that the day will be today.

7 THE COURT: Okay.

8 MS. FIFE: Other than that, there's no change to the
9 document. We just --

10 THE COURT: Right. You picked a day when the
11 market's relatively up.

12 MS. FIFE: Yeah, that's all. Yes, Your Honor. The
13 fact that there is a purchase price adjustment based on the S&P
14 is still in the contract. And the fact that the purchaser can
15 walk away as a result of a twenty-five percent drop in the S&P
16 is also in the contract. And that we were unable to change.

17 THE COURT: Okay.

18 MS. FIFE: So how would you like to proceed?

19 THE COURT: So that's a summary of the changes that
20 were made to the bid procedures that were sufficient to satisfy
21 two of the most vigorous objectors --

22 MS. FIFE: Correct.

23 THE COURT: -- that you confronted for this hearing.
24 You still have Carlyle. Mr. Mindlin, I see, is politely
25 raising his hand. And Mr. Herman is pointing to somebody else

1 who might be his designated fighter who's presumably here to
2 present Crossroads position. So --

3 MS. FIFE: Right.

4 THE COURT: -- we have an ongoing contested matter.

5 MS. FIFE: Correct.

6 THE COURT: Now, one question, I suppose, is given
7 these material improvements in the bid procedures, I'd be
8 interested in knowing and I think it's not a bad time for me to
9 hear from Mr. Mindlin and from Mr. Herman's partner, why we
10 still have a problem.

11 MS. FIFE: Okay, Your Honor.

12 THE COURT: And I also recognize that the debtor has
13 at least asserted obliquely that there are questions as to the
14 standing of a prospective purchaser. But for purposes of
15 today's -- or this evening's hearing, I'm simply interested in
16 hearing what Carlyle's counsel has to say. And I'm not, by
17 virtue of asking him to speak affecting any argument regarding
18 his actual standing to speak.

19 MS. FIFE: Yes, Your Honor.

20 MR. MINDLIN: Thank you, Your Honor. Good evening.
21 My name is Philip Mindlin. I'm a partner in the firm of
22 Wachtell, Lipton, Rosen & Katz. My firm represents Carlyle
23 Investment Management LLC which filed a limited objection to
24 the sale procedures --

25 THE COURT: I read that objection.

1 MR. MINDLIN: -- before Your Honor this evening.
2 Your Honor, Carlyle would be eager to participate in a real
3 auction for this company. We think it's a great company,
4 strong franchise, great portfolio managers, great client base.
5 And a number of the objections that we've put forward have been
6 resolved. Not a perfect resolution but it's been resolved.
7 And it's been resolved in a way that satisfied the two
8 committees and therefore I won't address the bankruptcy concern
9 and I won't address the break fee.

10 The concern that -- we have three principal
11 objections, Your Honor. And the one that hasn't been addressed
12 is the headstart in the consent process. And if I may, Your
13 Honor, I'd like to explain why it matters to us. The reason it
14 matters to us is that under the sale procedures as they now
15 stand, the Bain is out there already seeking client consent and
16 the consent of the public, the institutional clients, which
17 involves going to their boards and getting approval of the
18 board and then going out to the shareholder base of those
19 public clients. That process is already underway. I'm advised
20 by the debtors that it's going to cost something like five
21 million dollars to begin today to seek consent for Bain Group
22 to be the purchaser of these assets when they may in the end
23 not be the purchaser at all.

24 Now, that's not my five million dollars. So you
25 might properly ask why I should object to somebody else's five

1 million dollars being spent. And here's the reason, Your
2 Honor. It's that if you roll forward, what happens? When the
3 auction occurs and you're now forty-five days, there will be
4 two bids. I hope that we're going to be bidding. I hope that
5 ours will be the higher bid. But when you compare the two
6 bids, when the rational members -- and they are rational.
7 They're economically rational preachers. When the rational
8 folks on the side of the debtors and the committee and the
9 informal group look at the two bids, there will be one that may
10 be ahead in dollars but there will be another bid that has
11 already virtually completely its consent process because it got
12 a headstart with the estate's money and without asking you or
13 anyone else for permission. Right now, money that belongs to
14 these estates, albeit three or four tiers down, is being used
15 to give a headstart to somebody who may not be the winning
16 bidder. And so when we flash forward to the auction, and this
17 is why my client cares, there'll be two bids. One bid may be
18 higher in dollars. But the other one's got ninety-five percent
19 of its consent already in place. Now why does that matter?
20 Because people are rational. Because that means greater speed
21 and it means greater certainty. And because it means lesser
22 adjustments. There will be a greater ability to assess the
23 Bain Group bid because they've gone out and got the client
24 consents that are one of the many, many adjustments to the
25 purchase price. So anybody who isn't Bain Group is going to

1 have a bid that has these elements of speed, certainty and
2 unknowable purchase price adjustments baked into it. That's
3 unfair. It's not a fair auction. It amounts to a bidding
4 increment that we have to top that is unknowable to us. We
5 can't predict how much our bid has to be better by to overcome
6 these advantages of speed, certainty and lesser price
7 adjustments.

8 We suggested a solution to this. Actually, I don't
9 claim credit for it. It emerged out of the welter of
10 discussions. But we were amenable to it. And the solution
11 that was put forward that we were amenable to was that there
12 would be a consensus, an agreement, that this headstart at the
13 estate's expense wouldn't count when the bids were evaluated.
14 For reasons that I think were entirely sensible, the estate
15 said they couldn't agree to it because it might be that there
16 is a bid from someone who is truly unacceptable and who likely
17 wouldn't get consents and that it wouldn't be appropriate, in
18 the estate's view, to call out our sells and some of the other
19 bidders who are present in the room and say, you guys are okay
20 and we won't take that headstart into account for you while not
21 doing the same for this hypothetical other purchaser. I
22 understand that. But it leaves us with a process that's
23 unfair. It leaves us with a process that we're not sure we
24 want to play in because we're going to invest a lot of time, a
25 lot of effort, a lot of legal expense in a process that we

1 don't know we can win because somebody has, with the estate's
2 money, got this headstart that translates into a real but
3 unknowable economic advantage.

4 And so our view is that this solicitation process
5 should be stopped now. It shouldn't go forward. It's not fair
6 to have it go forward before a winner is picked. And only
7 after the auction occurs and we know who the high bidder is
8 should the process of seeking consent for that bidder to own
9 these assets begin with the estate's money. Thank you, Your
10 Honor.

11 THE COURT: Thank you.

12 MR. MINDLIN: Unless you have some questions, I'm
13 prepared to sit down.

14 THE COURT: No. I understand your argument and I
15 read your papers. And I think I know exactly where you're
16 coming from.

17 MR. MINDLIN: Thank you, Your Honor.

18 MR. BENNETT: Thank you, Your Honor. David Bennett,
19 a partner with Thompson & Knight here for Crossmark Equity
20 Advisers and its affiliates. Your Honor, we did file a fulsome
21 objection to the sale process and we'll certainly assume that
22 the Court has read it given the lateness of the hour. Our
23 objection at this point really falls into two categories:
24 jurisdiction and transparency. Both issues that the Court has
25 raised at least in the course of today. Twenty-three of the

1 twenty-four selling entities are not debtors before the
2 bankruptcy court. The debtor hasn't made any representation
3 about what notice has been given to those, to the creditors and
4 counterparties of nondebtor entities. My client is a purchase
5 money obligee of PFIG, Private Fund Investment Group, and built
6 and sold one of the businesses that are being auctioned as part
7 of the sales process. Your Honor, we simply don't see -- we
8 see it as premature. We see it as premature for the Court to
9 approve a sales process given the fact that the debtor hasn't
10 disclosed even as basic an item as what assets that are subject
11 to the sales process are inside and what assets that are
12 subject to the sales process are outside of the bankruptcy
13 estate. As a result, Your Honor -- there's a huge
14 jurisdictional question, Your Honor, that runs through this
15 entire process. If there are going to be entities, they're
16 going to be filed, they're going to avail themselves of the
17 bankruptcy sales process --

18 THE COURT: Let me stop you for a second so I
19 understand your argument, 'cause I'm not sure I do yet. We
20 were talking earlier about what I termed a call right on
21 certain entities to file for bankruptcy as designated by the
22 successful purchaser. Presumably they would then be subject to
23 the bankruptcy court's jurisdiction authority and I would be
24 empowered to enter appropriate orders at the time of a sale
25 hearing authorizing a sale of assets free and clear of all

1 liens, claims and encumbrances coupled with such other terms
2 and conditions as might be engrafted in such an order. Is that
3 the jurisdictional issue you're talking about or is it
4 something else?

5 MR. BENNETT: Well, that is the jurisdictional issue
6 I'm talking about, Your Honor, and it's an issue for the Court
7 today in this sense.

8 THE COURT: Why is that a today issue for purposes of
9 bid procedures?

10 MR. BENNETT: Because, Your Honor, what's being
11 requested is to establish bidding procedures for entities that
12 are outside the jurisdiction of this bankruptcy court. The
13 fact that they may later file a few days ahead of the sale
14 hearing is insufficient comfort to those creditors like my
15 client who may be impacted. And there's no indication that
16 those creditors and counterparties are even given notice of
17 this process. So the Court is being asked to approve a
18 process, approve a breakup fee, presumably payable out of the
19 assets of those entities with no notice to those creditors, no
20 pending bankruptcy of the case. And the fact that they have
21 reserved the right now shifted back to the debtor to file
22 bankruptcy cases, again, as late as a few days before the sale
23 hearing is cold comfort. This process, we all know -- I mean,
24 you can certainly feel the train leaving the station this
25 evening. It will certainly have left the station by then. And

1 whatever nominal notice those creditors and counterparties are
2 given a few days before the sale would be insufficient in our
3 view to protect their rights.

4 THE COURT: Doesn't everybody who's a sophisticated
5 party in interest in the Lehman Brothers family of companies
6 know that the IMD businesses to be sold includes these
7 enterprises? Or if they don't aren't they inquiring notice
8 now?

9 MR. BENNETT: Your Honor, I understand that
10 sentiment. On the other hand --

11 THE COURT: It wasn't a sentiment; it was just a
12 question.

13 MR. BENNETT: Well, Your Honor, they may be on
14 constructive notice. I don't know who those creditors are. I
15 presume that there are thousands of them, maybe tens of
16 thousands of them worldwide. And whether the parties that
17 could be impacted by this process, for example, the holders of
18 auction rate security claims, understand what impact this
19 process may have on their rights. I don't know. I can't
20 represent that. Certainly, sophisticated parties in the market
21 know about the Lehman bankruptcy case. That I will concede.

22 THE COURT: Okay. Well, that's the jurisdictional
23 issue.

24 MR. BENNETT: Yes, sir.

25 THE COURT: What's the other one?

1 MR. BENNETT: The other is transparency, Your Honor.

2 THE COURT: What about transparency at this point?

3 MR. BENNETT: My client, like so many others, resides
4 outside the bankruptcy process at this point at least in the
5 main. We have a guaranty from Lehman Brothers Holdings. But
6 we have no idea from the papers that have been filed what
7 impact the sales process will have on our claim, the assets
8 that would be available to pay our claim. We believe that our
9 counterparty is solvent. In fact, my client, who founded the
10 business or built the business that Lehman purchased in 2003,
11 would buy the business back for more than the debt against that
12 business today. But he finds himself trapped --

13 THE COURT: That's the fifty million dollar debt?

14 MR. BENNETT: Yes, sir.

15 THE COURT: Well, so, you're a little bit like
16 Carlyle in the sense that you're an objector but you're also a
17 potential participant in the auction process, right?

18 MR. BENNETT: No question about it. And we actually
19 tried to access that process and began the discussions on that
20 weeks ago. So far we haven't gotten anywhere in terms of
21 accessing the data room and participating in the process.

22 THE COURT: Is the only part of the asset base that
23 your client is interested in acquiring the very same platform,
24 the Crossroads platform that was sold in 2003?

25 MR. BENNETT: It's either the same or similar

1 platform, yes, sir.

2 THE COURT: It's the one that's based in Dallas?

3 MR. BENNETT: Yes, sir. That's correct. There have
4 been some, as you would imagine, modifications and changes to
5 that but that is where our interest lies.

6 THE COURT: Okay. So you're basically seeking to
7 unwind that sale and to acquire the same asset base or
8 something substantially similar?

9 MR. BENNETT: We're seeking to, if there's going to
10 be an auction process, we know this business as well as
11 anybody. We're seeking to participate in that. And failing
12 that participation, we'd like to see the value in our
13 counterparty protected. We'd like to know how the sales
14 process is going to be allocated and we'd like to ensure that
15 there is a fiduciary who's watching our value on behalf of us
16 and the other fee creditors. And so --

17 THE COURT: A fiduciary watching it? I don't
18 understand what you mean.

19 MR. BENNETT: Well, overseeing it.

20 THE COURT: But who's -- like Brian Marsal?

21 MR. BENNETT: He's in a position to protect it.

22 THE COURT: Isn't he the fiduciary for the estate?

23 MR. BENNETT: Your Honor, the fact that this sales
24 process generates the highest and best value for Lehman
25 Brothers Holdings Inc. at two billion dollars, hypothetically,

1 although it won't reach that level, doesn't mean that in the
2 process it will generate the highest and best price for my
3 client's counterparties. That's the point. And so there could
4 be a circumstance, certainly, where what's in the best interest
5 of other Lehman entities isn't in the best interest of my
6 client and its counterparty.

7 THE COURT: I don't understand how this affects
8 transparency. I know we've been using transparency --

9 MR. BENNETT: Well, the issue --

10 THE COURT: I'm not finished. Excuse me.

11 MR. BENNETT: The issue of transparency goes to --

12 THE COURT: When I'm talking, it's just great if you
13 just let me finish.

14 MR. BENNETT: Okay.

15 THE COURT: I know that we've been talking about
16 transparency throughout the day. But I don't understand how
17 the issue that you're addressing, which, I think, mostly is
18 parochial as to your clients, has anything to do with
19 transparency.

20 MR. BENNETT: The issue --

21 THE COURT: Explain it to me, please.

22 MR. BENNETT: Okay. I will. The issue of
23 transparency is our ability to assess the impact of the
24 proposed sale on the assets that would otherwise be available
25 to pay my client's claim. We can't assess what those assets

1 are that are being sold. We can't assess the purchase price
2 that would be attributable to those assets. And we can't
3 assess how our counterparties' ability to be paid will be
4 impacted by the sales process. So it's transparency in that
5 sense.

6 THE COURT: Is it transparency or is it simply the
7 fact that you're interested in a subpart of the businesses
8 being sold and you're not interested in being a player for the
9 whole. So it's difficult for you to compete for what you want
10 which is a piece. That's not really transparency. That's just
11 that you have a different set of economic objectives.

12 MR. BENNETT: We are interested in a piece. But
13 failing that, Your Honor, we're interested in seeing our rights
14 protected in this process.

15 THE COURT: Okay.

16 MR. BENNETT: Thank you.

17 THE COURT: Well, now I know -- oh, there are more.
18 Mr. Bromley?

19 MR. BROMLEY: Your Honor, James Bromley, Cleary
20 Gottlieb Steen & Hamilton on behalf of Hellman and Friedman.
21 If I can be heard on response to the objection?

22 THE COURT: Sure. I'm just not sure who you're
23 representing.

24 MR. BROMLEY: Hellman & Friedman, one of the bidders.

25 THE COURT: Oh, fine.

1 MR. BROMLEY: Your Honor, I think that the two
2 objections are eminently distinguishable. First, what we're
3 talking about here is not a simple business. And the
4 objections try to simplify, we think, much to the detriment of
5 our bid as I would think would be the case that Carlyle is
6 seeking to bid against us. But also to the detriment of the
7 business itself.

8 Our clients have been sitting up at Weil Gotshal for
9 several weeks working extremely hard to stabilize this business
10 to provide a proposal, a proposal that the management of the
11 business can take to its employees, that provide the value for
12 this business all during the time of the greatest market
13 upheaval any of us have seen in our lifetime. So does that
14 mean that's a bad thing? I think actually, it's a very good
15 thing. Provides very strong benefit to this estate and to all
16 of the other entities that are not yet before Your Honor.

17 So the question is, are the benefits that the
18 stalking horse bidders are looking for right now unreasonable
19 under the circumstances? And certainly, Your Honor, we feel
20 that they are. We also feel that we've made a substantial
21 amount of movement over the past couple of days and
22 particularly in the conference right outside your courtroom.
23 And so, as we're sitting here today, we have to take into
24 account, though, in terms of some of these particular
25 complaints, some of the particularities that this business

1 presents. So Mr. Mindlin talks quite a bit about the consent
2 process and the leg up and the gun jumping that a benefit that
3 he says is unfair.

4 Your Honor, we're not talking about a simple
5 business, as I said. We're talking about a business that is an
6 investment advisory business, a business where the material
7 assets are subject to the Investment Advisers Act and certain
8 very significant and specific requirements in terms of seeking
9 consent to transfer those assets.

10 Mr. Mindlin knows that. He also recognizes, I think,
11 or if he doesn't recognize it he should, that that process
12 isn't something that takes place over the course of a day or a
13 week or even a month. It takes place over the course of three
14 or four months. So the idea that with an auction process that
15 is scheduled under the current schedule that we have agreed to,
16 and, hopefully, Your Honor will enter, we would have an auction
17 in forty-five days. We have not yet, as we stand here today,
18 started any consent process. So I want to correct that
19 statement that had been made on the record. And once that
20 consent process begins, Your Honor, it's going to take several
21 months.

22 So the idea that we're getting some substantial and
23 significant gun jumping and benefit that puts this bidder, who,
24 frankly, doesn't have standing in our view, Your Honor, but
25 does have motivation to accept that proposal as the proposition

1 that should govern how the consent process should go forward
2 frankly doesn't make any sense.

3 And with respect to Bain Capital and Hellman &
4 Friedman, the efforts that have been expended over the past
5 three weeks, we believe, have conveyed a substantial benefit on
6 these estates stabilizing this business and the individuals who
7 are the core of this business. We believe that once Mr.
8 Ridings gets on the stand he'll testify to that. We're
9 absolutely sure of that.

10 So as we stand here today and hear two objections
11 which are left after substantial movement and good faith effort
12 on the part of Bain and Hellman & Friedman, we have to take
13 into account who they are. Carlyle is here represented by
14 Wachtell Lipton. I submit, Your Honor, that they knew exactly
15 where we were for the last three weeks. They knew exactly
16 where Mr. Ridings was located, where Mr. Miller was located.
17 And if they wanted to come in and put another bid on the table
18 and be here as the stalking horse bidder instead of us, they
19 had every opportunity to do so. They're certainly represented
20 by sophisticated counsel and they're certainly well known in
21 the business. So the idea that they've been somehow
22 disadvantaged by having to sit here and complain about our
23 bidding procedures, we think is ridiculous.

24 They also have a lot of motivation, Your Honor. They
25 have a lot of motivation to preserve their optionality. I

1 think Mr. Mindlin said he would hope to put in a bid. And he
2 would hope if he put in that bid that that bid would be the
3 highest bid. We have a signed and binding contract, Your
4 Honor. Yes, it is a contract with purchase price adjustments
5 and termination rights, the sort of termination rights and
6 purchaser price adjustments that Mr. Mindlin would have
7 demanded if he was the stalking horse bidder.

8 So the idea that we're sitting here today dealing
9 with a phantom is, in our mind, inappropriate. It undercuts
10 substantially the perception of the value that we've given to
11 this process. We're talking about an investment advisory
12 business, people who are dealing with people's investments,
13 their stocks and their bonds. And I don't think there's a
14 person in this courtroom, Your Honor, over the past three weeks
15 that hasn't sat down and had some very difficult conversations
16 about their own portfolios. So the idea that these portfolio
17 managers are being held together by our bid, I think, is a
18 very, very true statement.

19 THE COURT: I have a question for you, Mr. Bromley,
20 just to interrupt you for one moment. I don't understand
21 enough about the consent process to use the word as a
22 sufficiently defining concept. Tell me, if you can, what's
23 involved and whether or not once the consent process has been
24 undertaken and completed, it is rational for any other bidder
25 to step in because one of the problems here, and I'm not

1 disagreeing with anything you've said so far, is that we have
2 the proverbial uneven playing field problem which wasn't said
3 by Mr. Mindlin in his oral remarks but certainly implied in his
4 written submission that there's something fundamentally unfair
5 about giving the stalking horse what amounts to the keys to the
6 kingdom before the kingdom has been acquired. And what I want
7 to understand is whether the process of obtaining consents is
8 something that -- at a five million dollar price tag, I
9 understand, potentially, which you haven't disputed so I'm
10 gathering that's a good rounding number for it, how easy is it
11 for someone else to do it. If you already have the consents,
12 does that mean that parties are readily willing to give
13 consents? If you get the consents, are the consents Bain and
14 Hellman & Friedman specific or are they consents that go to the
15 notion of ownership change provided that we're dealing with a
16 reputable firm of the sorts that you represent? I don't
17 understand enough about the concept of consent to know whether
18 it's personal, whether or not after someone has gone through it
19 it's unlikely they're going to want to be burdened by it again?
20 Are they going to say enough's enough? I consented to the
21 Bain/H&F deal and I'm not going to consent to anybody else. So
22 if it's that, isn't it a lockup? So I want to know what it is.

23 MR. BROMLEY: Okay.

24 THE COURT: I don't want to characterize it. What is
25 it?

1 MR. BROMLEY: The Investment Advisers Act, Your
2 Honor, requires that when you're going to transfer these
3 investment advisory agreements that you need to obtain --

4 THE COURT: Understood. Why isn't that just a
5 condition for closing?

6 MR. BROMLEY: Because it takes a number of months to
7 go through that, Your Honor.

8 THE COURT: Okay.

9 MR. BROMLEY: And our process that we put in place is
10 important to getting to closing sooner rather than later. Not
11 just --

12 THE COURT: I think that's desirable. But the
13 problem, and this is one that I just want to hear more about,
14 is that --

15 MR. BROMLEY: Sorry, Your Honor.

16 THE COURT: If you want to confer, that's fine.

17 MR. BROMLEY: Would you like -- you were in the
18 middle of a question.

19 THE COURT: Do you want to confer for a minute or do
20 you want me to finish my sentence?

21 MR. BROMLEY: Yes, please, Your Honor.

22 THE COURT: The problem that I have is that it seems
23 to me that if it's initiated when you're the stalking horse
24 bidder and if it takes some amount of time and money to get it
25 done that you have a noncash lockup on the process that may

1 have a material chilling impact upon alternative bidders. And
2 that's a serious issue unless you can explain to me that this
3 is something that anybody can just step up and do. If it's
4 something that anybody can step up and do then this is just a
5 timing issue. If it's an exclusivity issue, you have a
6 problem.

7 MR. BROMLEY: I understand, Your Honor. Can I confer
8 for a moment?

9 THE COURT: Sure.

10 (Pause)

11 MR. BROMLEY: Thank you, Your Honor, for the -

12 THE COURT: There's another little cluster over
13 there. So let's come back to order.

14 MR. BROMLEY: The idea that there are clusters of
15 people discussing Investment Adviser Act consent process is --
16 I don't think it happens much. Your Honor, I think a couple of
17 things to respond to your questions. First, does this
18 foreclose anyone else from doing it? The answer is no. Is the
19 contemplation that the consent process will mention Hellman &
20 Friedman and Bain and them alone in connection with the initial
21 solicitation? Yes. It will say Hellman & Friedman and Bain as
22 purchasers in accordance with the terms of the asset purchase
23 agreement.

24 THE COURT: And will it say that this is all part of
25 a bankruptcy process in which there's no assurance whatsoever

1 that we'll be the successful bidder and as a result, we're
2 asking you to consent to something?

3 MR. BROMLEY: It will --

4 THE COURT: It's entirely contingent and possibly
5 illusory?

6 MR. BROMLEY: I don't think we had the word
7 "illusory" in the draft.

8 THE COURT: Well, but I want to consider that word.

9 MR. BROMLEY: Well, Your Honor --

10 THE COURT: No, I'm teasing.

11 MR. BROMLEY: -- yes, it -- yeah -- no.

12 THE COURT: What I'm really pointing out is this is a
13 problem for me and I think you're hearing it's a problem for
14 me.

15 MR. BROMLEY: I understand what you're saying, Your
16 Honor, but I think there's a couple of statements in response.
17 One, we absolutely plan to make it clear that this is subject
18 to a bankruptcy court approval process and that other bids are
19 possible. We have not --

20 THE COURT: What about encouraged?

21 MR. BROMLEY: Can we say who's encouraging that, Your
22 Honor.

23 THE COURT: Actually I am.

24 MR. BROMLEY: You're encouraging it. The fact is,
25 Your Honor, what we are planning on doing is starting a three

1 or four month process. Why are we starting that process?
2 Because we believe as the purchasers who want to buy this
3 business that it's very important to stabilize this business as
4 soon as possible. There is already word out there on the
5 street that this process is going forward. The fact that
6 Neuberger Berman, the investment management division, was up
7 for sale prior to the bankruptcy filing is already out there.
8 The first thing that Neuberger Berman had to do after the
9 bankruptcy filing was put notices up on their website to give
10 comfort to their customers. These are people who had the
11 ability to walk away on a hair trigger notice. As well as the
12 people who are working at the company, the ones who are
13 providing the value, the value that we would be looking to
14 purchase and the value that Carlyle would be looking to
15 purchase. So the idea that there is something that's going to
16 be done here that cannot be undone, it's just not true. If
17 we're going to sit here and try to determine from a
18 psychological perspective if somebody who is already standing
19 out there in this market wondering whether they should remain
20 with Neuberger Berman or one of the other investment management
21 companies is going to be put off by having the possibility of a
22 second consent, if there's a higher or better bid, particularly
23 one from an institution as sterling as Carlyle, I think that is
24 something that is not a real concern that shouldn't be driving
25 this process.

1 THE COURT: Can you explain -- 'cause I still have
2 this lingering concern that I don't have a very good
3 understanding of what's involved in obtaining these requisite
4 consents, how hard it is to get them, what the process is on
5 the side of the party whose consent is being given, whether or
6 not in undertaking the process, the party giving consents has
7 to go through their own internal process of diligence and
8 oversight and review. And to what extent as a result of doing
9 it once it's a one shot deal that parties don't want to have to
10 do again? So one of the concerns I have, and it may be that I
11 just don't understand this -- in fact, I know I don't
12 understand this which is why I'm asking the question. I'm
13 trying to understand whether or not this is an unfair advantage
14 or simply something that the deals requires because unless this
15 is done, the somewhat intangible nature of a business of this
16 sort begins to unravel. Now, no one's actually said that in so
17 many words to me and I don't know if it can be said because the
18 fact that there is an approval process that is a condition to a
19 closing is hardly a new concept. What is a new concept is that
20 the approval process is happening before a party has been
21 anointed. That's what's troublesome. And I've never seen it.
22 And I bet you haven't either.

23 MR. BROMLEY: Well, Your Honor, we certainly strongly
24 believe that the nature of the business requires this process
25 to start sooner rather than later. And we believe that it

1 should start as soon as we're ready to do it. I --

2 THE COURT: Well, shouldn't it start as soon as
3 somebody is awarded the bid?

4 MR. BROMLEY: I understand, Your Honor. It would be
5 helpful, I think, if Mr. Rose -- two things. Mr. Rose could
6 explain a little more detail about the consent process. But I
7 also think what we've done here and this is unfortunate the way
8 we've structured it -- and fortunate for us, right? -- that
9 normally what we would have here is we would have already had
10 Mr. Ridings on the stand. He already would have talked about
11 the fragility of the business and the importance of the
12 process. We have not had that yet. All we have had is an
13 objector who is a competing bidder with a motivation to make
14 our bid as little as possible and to have as much optionality
15 for them as possible without having put any effort into this.
16 And that's what we're doing here. So we haven't had the
17 evidence yet. And we're talking about Mr. Mindlin's objection.
18 Without there having been anything that -- and I know that it
19 was without prejudice to the argument that he shouldn't have
20 been able to stand up. But, in effect, once he stood up, we're
21 here. So what we have, I think, to help Your Honor deal with
22 this is Mr. Rose is the corporate lawyer who can explain in
23 much more detail the Investment Adviser Act process and why we
24 believe strongly that it does not prejudice anything here as
25 well as the evidence that we believe should be put on with

1 respect to the damage to the business if this process doesn't
2 go forward.

3 MS. FIFE: Your Honor, if I could interrupt for one
4 second. I'm happy to put on Mr. Ridings or do it by proffer,
5 if you would like. In addition, we do have the general counsel
6 of Neuberger Berman here in court and it may make sense for him
7 to explain to you the process which the company anticipates
8 going through in connection with the consent rather than Mr.
9 Rose, if you'd like.

10 THE COURT: That's fine. I'll hear from anybody
11 who's competent to tell me. And it might also be useful to
12 hear from Neuberger Berman's general counsel to know a little
13 bit more about the fragility of the business. And if he knows
14 what the process is like, his view of the process, and in
15 particular, whether or not this is a process which once done
16 can be done again in practical terms. Because one of my
17 concerns here and no one has yet really answered this is
18 whether or not this is a completed transaction before it's a
19 completed auction. That's my concern.

20 MS. FIFE: Right. It's not a completed transaction
21 because the consent process will not be complete before the
22 auction process will be complete.

23 THE COURT: But it may be substantially complete.

24 MS. FIFE: Based on my understanding of the process,
25 it will take at least three months before we will be able to

1 get the consent. So if we're talking about a sale hearing in
2 sixty to sixty-three days, Your Honor, the consent process will
3 naturally be subsequent to the auction process. So I don't
4 think that we run the risk of having the consent process prior
5 to the auction. The risk as we see it is that customers,
6 clients, ordinary people and institutions who get a consent
7 form in the mail that says will you go with me to Bain and
8 Hellman & Friedman and they consent, yes, we'll then
9 subsequently perhaps get another form. And will it lead to
10 confusion? Will it lead to a lot of phone calls to their
11 portfolio managers? Will it lead to -- if the market's not
12 doing particularly well or their portfolio manager doesn't do
13 well, then perhaps they will withdraw their account. So we run
14 the risk that there will be a diminution in the value of the
15 assets by virtue of a second auction. Having said that --

16 THE COURT: A second auction or a second --

17 MS. FIFE: I mean a second --

18 THE COURT: -- solicitation of consent?

19 MS. FIFE: Second solicitation, I'm sorry. Having
20 said that, we negotiated a transaction with Bain and Hellman &
21 Friedman which was extremely difficult at arms' length. Mr.
22 Ridings can testify to that. It was over the course of two
23 weeks. And it was a package. We won several points and didn't
24 get others and this was the process that we ultimately reached.

25 As to -- wow.

1 THE COURT: They're ganging up on you from behind.

2 MS. FIFE: Yeah. I mean, as to Mr. Mindlin's
3 objection, it's really a price issue. I mean, he's basically
4 saying at the end of the day when we look at Carlyle's bid, if,
5 in fact, it does bid, will we take that into consideration.
6 And that's perhaps -- and it's just a question of price. And I
7 think that can be taken into consideration.

8 THE COURT: I'm actually not seeing this as a pricing
9 issue and I may be seeing it wrong which is why I think we
10 should go to some evidence. My concern --

11 MR. MILLER: If I can just supplement Ms. Fife's --

12 THE COURT: Let me just finish my concern and then
13 I'll hear from you, Mr. Miller. My concern is that the process
14 of getting the consents may be a fait accompli, that by virtue
15 of getting the consents or having substantially taken the steps
16 necessary to achieve that goal, for all practical purposes
17 means no one else is a permissible bidder, even at a higher
18 price, because there's too much risk in resoliciting.

19 MS. FIFE: Right.

20 THE COURT: That's the concern.

21 MS. FIFE: Right. And I don't think that's the case.

22 THE COURT: Well, let's find out.

23 MR. MILLER: But, Your Honor, Mr. Mindlin's objection
24 wasn't to that point. What Mr. Mindlin was objecting to, Your
25 Honor, is that if Carlyle came in and bid and let's say the bid

1 some dollars over Bain and Hellman & Friedman, in determining
2 which is the best bid, would the committee and would the debtor
3 and would all the other interested parties say well, Bain and
4 Hellman & Friedman have got the consents already.

5 THE COURT: I understand that was Mr. Mindlin's
6 point. That doesn't matter. This is my point now.

7 MR. MILLER: I understand, Your Honor.

8 MR. ROSE: May I be heard, Your Honor? May I be
9 heard?

10 THE COURT: Yes, of course.

11 MR. ROSE: Alfred Rose again from Ropes & Gray. Your
12 Honor asked if this is a conventional or unconventional
13 process. And the answer is it's completely conventional. When
14 a public company investment adviser agrees to sell itself, it
15 begins the process of seeking client consents immediately even
16 though the transaction remains subject to shareholder approval
17 and subject to the risk that a competing bidder will emerge who
18 is willing to pay a higher price. If the competing bidder
19 does, in fact, emerge and does agree to pay a higher price then
20 that public company investment adviser would set aside the
21 transaction it had entered into and would begin seeking
22 consents for the other transaction. So the process here is
23 exactly like --

24 THE COURT: Has it ever happened?

25 MR. ROSE: I can't say.

1 THE COURT: I'll bet you don't know because I'll bet
2 it's never happened.

3 MR. ROSE: Your Honor, I can't think of a case in
4 which it has happened --

5 THE COURT: Okay. So why make the argument? It's
6 not conventional. It's just plain wrong. You've stood up and
7 said it's purely conventional and you acknowledge that you know
8 of no precedent.

9 MR. ROSE: Your Honor, what I believe is conventional
10 is the fact that the consent process has begun immediately
11 after the deal is announced.

12 THE COURT: Yes. But this is in bankruptcy. This is
13 in bankruptcy and you have no rights yet except the rights that
14 we're going to give you if I approve the bid protections which
15 are just that, bid protections. It's not a right to do
16 anything except maybe be the stalking horse bidder if no one
17 else bids. That's the problem here. This is not a board that
18 has decided to do something. This is a process that's entirely
19 contingent. Understood?

20 MR. ROSE: I do understand, Your Honor. Would it be
21 helpful for me to describe the consent process?

22 THE COURT: Yes, please. But I also want to hear it
23 from Neuberger Berman's counsel.

24 MR. ROSE: Very well. There will be three separate
25 streams to seek client consent. One stream will relate to

1 those clients whose contracts require their written consent.
2 And there, Neuberger Berman will reach out to them with a
3 letter and with a form consent that it will ask them to sign
4 and return. In order for the consent to be effective, it needs
5 to describe who the buyer will be.

6 The second stream will relate to a group of clients
7 whose contracts require consent but do not require written
8 consent. And for that group of clients, Neuberger Berman will
9 reach out to them with a letter that says we are proposing to
10 enter into a transaction subject to bankruptcy court approval
11 and if we do not hear from you within the next forty-five days,
12 we will presume you to have consented. And that's an accepted
13 process under the Investment Advisers Act. It's been
14 sanctioned by the SEC.

15 The third stream will relate to mutual fund clients.
16 With respect to mutual fund clients, Neuberger Berman will
17 first go to the boards of directors or boards of trustees of
18 the funds and seek their consent. And when that consent is in
19 hand, it will then mail proxy statements to the shareholders of
20 the fund and seek their consent. In general, a majority of the
21 shareholders must vote in favor in order to give consent.

22 THE COURT: That sounds like the hardest part.

23 MR. ROSE: Your Honor is right. Can I be of further
24 help to Your Honor or would you prefer me to step back?

25 THE COURT: No. That's very helpful. I think we

1 should get to a record pretty soon. It's getting late.

2 MR. MINDLIN: Your Honor, I'll be brief then. It's
3 Phil Mindlin, Wachtell Lipton for Carlyle. Three quick points,
4 Your Honor. First, if you were to refer to the contract,
5 Section 714 and 715 are the sections of the contract that deal
6 with this consent process and even actually lay it out in some
7 detail. And it is actually consistent with what was just
8 described to you. The flavoring around it, though, the color
9 around it is that it's a lot more interactive on the private
10 client side than I think you would have concluded if you had
11 only heard the description. What happens is that the portfolio
12 managers deal with people who do what people normally do. They
13 put the letter aside to deal with later. And so there's a
14 process of reaching out, calling, urging and encouraging. And
15 one thing that hasn't been mentioned to Your Honor is that it's
16 already begun. Letters have gone out that were dated October
17 8th that made no mention of an auction. Those letters said
18 that the companies entered into an agreement with Bain, Hellman
19 & Friedman, that it's highly constructive, that the new
20 partners have extensive experience, they understand the
21 business, they respect the distinctive culture, etcetera,
22 etcetera. Nothing about an auction. Nothing about possibly
23 somebody else being the winning bidder.

24 So that's the color, Your Honor. It's interactive.
25 It's begun already. If it's really a process that takes four

1 months, and I don't dispute that, then waiting forty-five days
2 until you know who the real purchaser is, is worth waiting
3 because it is an unfair advantage that's baked into the
4 process. And it is also -- and I'm not sure that this entirely
5 came through in what was said to Your Honor. It's completely
6 Bain specific. Apparently, and I'm no expert on this, but I'm
7 told that you can't go out and seek some sort of generalized
8 consent. You have to describe exactly on whose behalf consent
9 is being sought. So the consent that people are talking about
10 is a five million dollar proxy solicitation on behalf of Bain.
11 Thank you, Your Honor.

12 THE COURT: Okay. Thanks. Should we put on some
13 evidence or how do you want to handle this?

14 MS. FIFE: Excuse me, Your Honor.

15 THE COURT: Or do you want to talk?

16 MS. FIFE: Evidence is fine, Your Honor. Would you
17 like Mr. Ridings or someone from Neuberger?

18 THE COURT: As I've said in the past, it's your case.

19 MS. FIFE: Yeah. Why don't we deal with the issues
20 that you've requested from Neuberger? So I'd like to call Mr.
21 John Bluagr to the stand.

22 THE COURT: Sure. Can you stand up in that little
23 box? Raise your right hand.

24 (Witness duly sworn)

25 THE COURT: Please be seated.

1 DIRECT EXAMINATION

2 BY MS. FIFE:

3 Q. Mr. Bluagr, please state your full name for the record.

4 A. It's John Bluagr, B-L-U-A-G-R.

5 Q. And where do you reside?

6 A. I reside in Denver, Colorado but I live in New York City
7 also.

8 Q. And where do you currently work?

9 A. I am the general counsel of the IMD division of Lehman
10 Brothers. And I live here -- work here in New York at 399 Park
11 Avenue.

12 Q. And can you give us a brief history of your past work
13 experience?

14 A. I've been in the securities industry for approximately
15 twenty years, private practice beforehand. I've worked in the
16 insurance industry and for the last ten years in the asset
17 management business.

18 Q. And prior to that, what schools did you attend?

19 A. University of Wyoming for both undergraduate and law
20 school.

21 Q. Are you familiar with the IMD transaction?

22 A. Yes, I am.

23 Q. Have you read the purchase agreement?

24 A. Yes, I have.

25 Q. Are you familiar with the requirement to get consents to

1 the transactions that are proposed in the purchase agreement?

2 A. Yes.

3 Q. Could you explain to the Court the consent process?

4 A. The purchase agreement provides for within a reasonably
5 commercially -- reasonably commercial period after the sign-in
6 for us to commence a consent process with regard to all of the
7 clients and the IMD business.

8 Q. And what are those consents specifically?

9 A. Well, we've got a schedule which I brought up with me -- I
10 think is part of the asset purchase agreement which goes into a
11 number of the different consent process. But, in general, Your
12 Honor, you have a '40 Act consent process which is for all of
13 the mutual fund shareholders. That process requires us to
14 develop a proxy. We have to have -- the proxy has to have
15 specifically has to address the transaction and how the
16 transaction is structured and who the buyers are. That has to
17 be approved by the fund share -- the fund board. They have to
18 go through a diligence process to make sure they understand
19 that. They approve that. It goes to the SEC. SEC reviews it
20 and approves it which takes, you know, a period of time
21 depending on how much expediency they're willing to provide.
22 And then it gets mailed with the proxy cards. And then you go
23 through a forty-five day waiting period and then you begin to
24 solicit those proxies, have a proxy solicitation service and
25 try and obtain a quorum so that you can have a vote and you can

1 get -- you can get the proxy approved. That's essentially the
2 '40 Act part of that with regard to the mutual funds.

3 We have a variety of different other types of consents.
4 Mr. Rose was accurate in his portrayal. There's a negative
5 consent capacity with some contractual asset management
6 clients. With some historic clients, there is a positive
7 consent required where they must be mailed a specific letter.
8 Has to have the detail with regard to who's in the transaction,
9 who the buyers are and they have to specifically sign off.

10 There are a series of accounts which are held on what are
11 called wrap platforms which would be an intermediate sale
12 client who we have our product positioned on a, say, a Merrill
13 Lynch retail platform for sale. We have to go through a
14 process with those intermediaries to get those consents done.

15 There's an institutional -- they're institutional clients
16 which do work through consultants primarily. We have contracts
17 with them. We would have to go -- and those -- that's -- that
18 is, in particular, is a renegotiation of the contract. And you
19 have to go through on a client by client basis, seek their
20 approval to have that contract affirmed. And -- as part of the
21 consent process. And those are for fairly large institutions
22 which do business with us.

23 MS. FIFE: Your Honor, may I interrupt for one
24 second, please? We actually have a schedule to the purchase
25 agreement that lists all of the consents that are required. It

1 might be helpful if I could provide that to you.

2 THE COURT: That's fine. You may approach. Okay.

3 A. So the core piece of the Neuberger business aside from the
4 '40 Act product are what we call PAM. It's the private asset
5 management business which are -- they are clients who are --
6 have signed advisory contracts and our portfolio managers
7 provide advisory services to those clients under our Investment
8 Adviser. And we have approximately -- I think it's 50,000
9 clients that would be in that category. And those -- those --
10 that group are divided. And some we'll be able to -- we'll be
11 able to obtain positive consents. Some we'll have -- we'll be
12 able to do negative consents as part of the process we've -- we
13 looked at.

14 With the fixed income business, there are a variety of
15 different products. There are CDOs which require a very
16 specific type of consent process that we would have to go
17 through to get to -- to get down into -- to where the clients
18 are for purposes of those.

19 But that's a general outline of the types of consents we
20 would ultimately have to get for the business. And I can go
21 through this in more detail if you're interested but that's --
22 I think that's a general outline.

23 Q. Would you take a moment and just review the schedule and
24 see if there are any consents that you have neglected to
25 mention?

1 A. We have the private equity business which would be --
2 would be a consent from the independent directors. We have a
3 hedge fund business that has a variety of different products.
4 Those would be written client consents also pursuant to the --
5 to the investments and the limited partnerships that the
6 clients made. Let me just look through.

7 Q. How long would you anticipate this consent process to
8 take, Mr. Bluagr?

9 A. I think when Lehman acquired Neuberger, if we use that as
10 a roadmap, that's approx -- it was approximately ninety days.
11 I think with -- thereabout to obtain all of the consents.

12 Q. Thank you. Would the solicitation of the consents for
13 Bain and Hellman & Friedman preclude the solicitation of
14 consents on behalf of another entity if Bain is not the winning
15 bidder?

16 A. If Bain were not the winning bidder at the close of the
17 363 process, we would have to go through and do a
18 resolicitation of all the clients --

19 Q. And --

20 A. -- if that's your question.

21 Q. Yes --

22 A. Okay.

23 Q. -- it is my question. And do you think that that process
24 would be harmful to the business in any way?

25 A. I have a view on it. It's -- I think we feel that there

1 is likely to be a substantial amount of confusion on the client
2 base. We -- as the attorney for Hellman said, they did help us
3 through a period -- very rough period with the Lehman
4 bankruptcy landing right in the middle of a -- what was
5 essentially an auction process that was being done. They --
6 they spent weeks with us working day and night working to get
7 an agreement done. It did help stabilize the business. We
8 feel comfortable that the clients -- the client attrition has
9 slowed down substantially in the last week to ten days. And
10 the clients know that a consent process will be undertaken at
11 some point in time. And, you know, we -- we do have -- we do
12 have some anxiety about the fact that we would have to go
13 through two consent processes.

14 MS. FIFE: Your Honor, I'd like to mark the schedule,
15 I forgot to do that, as Exhibit 1.

16 THE COURT: Do you want to offer it?

17 MS. FIFE: Yes. And I'd like to offer it into
18 evidence?

19 THE COURT: Any objections? It's admitted.

20 MS. FIFE: Thank you.

21 (Debtors' Exhibit 1, schedule to asset purchase agreement of
22 client consent process, was hereby marked for identification
23 and received into evidence as of this date.)

24 MS. FIFE: Could I just have a moment, please?

25 Q. Are you familiar with the letter that was sent to various

1 customers of Neuberger on October 8th?

2 A. I -- I -- I'm sure that I am. But at this point, I -- if
3 you could show it to me, I could tell you if I've read it and
4 if I've -- if I edited it. But --

5 Q. Let me ask you a different question. Has Neuberger begun
6 the solicitation process?

7 A. No, not officially. We are prepared -- if we need to move
8 forward quickly, we're prepare. And we think the client base
9 is prepared if we need to wait until an auction process is
10 completed.

11 Q. Just finally, in your opinion does the consent process
12 which we have agreed to with Bain and Hellman & Friedman
13 constitute a lockout -- lockup, lockout of other bidders?

14 A. You know, I go back to what I said before. I think it
15 creates a significant amount of potential confusion on the
16 clients. I think it becomes much more difficult to obtain
17 consents if, in an auction process, they were unable -- if they
18 were not the winning bidder. And I think the clients --
19 there's a high chance for an extension and a larger amount of
20 time to get through the '40 Act process in particular. And it
21 gives the institutional clients basically a second chance to
22 reassess whether there's too much instability in the business
23 and whether or not they want to continue having their
24 contractual -- contractually have their mandates by our
25 advisors and by our fixed income people.

1 Q. But with time, you can solicit consents, correct?

2 A. We would be able to do that in time but I -- I -- there is
3 a high degree of fear that that could be a damaging process to
4 our client base.

5 MS. FIFE: Thank you. No further questions.

6 THE COURT: Anyone else wish to question the witness?
7 You're not quite excused but close. You're excused. Thank
8 you. Did you want ask any questions?

9 MR. BROMLEY: Yes, I did, Your Honor. Sorry. Excuse
10 me. I was asking Mr. Mindlin if he wanted to ask any
11 questions.

12 THE COURT: You actually almost lost that opportunity
13 and it's out of my being very tired that I'm not snapping at
14 you for getting up too late. Go ahead.

15 MR. BROMLEY: I apologize, Your Honor. Next time
16 I'll try not to be polite to Mr. Mindlin.

17 THE COURT: No. Please be polite to him. He needs
18 it.

19 MR. BROMLEY: I'm just kidding, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. BROMLEY:

22 Q. Mr. Bluagr, you testified that the process that Bain and
23 Hellman & Friedman have gone through to date has helped
24 stabilize the business, correct?

25 A. The pro -- yeah. The process of us -- of working with us

1 to the point where we were able to arrive at an agreement. I
2 think the fact that there is an agreement in place, has
3 stabilized the business, have made clients feel more
4 comfortable.

5 Q. The fact that there is an agreement has stabilized the
6 business? If there was --

7 A. Yes.

8 Q. Yes. Thank you. If there was an announcement that there
9 was no longer an agreement in place, what effect would that
10 have on the business?

11 A. I think there would be -- it would both be a destabilizing
12 event for the clients and for the internal employees.

13 Q. Could you try to split that up? How do you see it
14 destabilizing with respect to the internal employees?

15 A. The employees are searching for clarity right now in their
16 world. There's, you know, a large group of employees have
17 moved off to Barclays. A large group of employees
18 internationally have moved off to Nomura. The employees that
19 are essentially part of the IMD division are waiting for some
20 clarity around what their role is going to be and how quickly
21 we can get to a closing and be on with our -- with our business
22 with a new partner.

23 Q. And with respect to the clients, could you describe that a
24 little more?

25 A. With the clients, I think it's more just confusion over

1 whether this means there's a change in their relationship with
2 their manager, whether this means that there's been some change
3 in terms of who's going to be actually managing their money.

4 And so I think it's -- it's more of just a -- a market
5 confusion, I guess, maybe not knowing what the process means.
6 And I'm -- am answering this based on the limited question you
7 asked which was if there -- if there was no more agreement. If
8 there was a substitute agreement, there is an agreement that is
9 put in place momentarily after an auction takes place. I think
10 that confusion and that issue is diluted.

11 Q. So is it fair to say that the existence of an agreement
12 with Bain and Hellman & Friedman has stabilized both the
13 business and the employees but with respect to the clients you
14 say that it's more of an issue of confusion with respect to a
15 second consent process?

16 A. I think -- you know, it may be best if we could ask the --
17 you know, the business folks their view because they actually
18 have a much tighter and closer relationship to what the clients
19 actually think on a day to day basis. But my view is that
20 receiving, you know -- these clients having just come through a
21 horrific event with a lot of confusion, particularly, those
22 clients that had crossover assets into LBI and all of the
23 confusion on where their accounts were, where their money was,
24 whether they had protection.

25 The clients, I think, have come through that period that

1 we've stabilized. The clients now understand that we're still
2 here. We have an operating business that we're trying to run.
3 The managers are still doing what they're doing. They're
4 working with the clients because of the terrible market
5 conditions.

6 Getting a consent letter or proxy saying that a
7 transaction has been completed or is being commenced and is
8 going to be completed at the close of an auction and these are
9 the people that are buying it, it's my belief that if that
10 doesn't occur and another buyer comes forth, it creates a
11 significant amount of confusion on the client's part around
12 what's happened. It gives them another opportunity to think
13 that the business is unstable and to question what exactly took
14 place 'cause for their part they don't understand the 363
15 hearing, they don't understand what the auction means.

16 You know, I think the clients view this as being a
17 stabilizing event. They think there's a new owner coming in.
18 And I don't think they're looking ahead to an auction process
19 which could generate another owner.

20 Q. But in the information process and consent process, you do
21 intend to tell the customers and clients that there is a
22 process, correct?

23 A. That's correct. Yes.

24 Q. Okay.

25 MR. BROMLEY: Thank you, Your Honor. No further

1 questions.

2 THE COURT: Thank you. You're excused. You're
3 really excused this time. Do you have any more witnesses? Do
4 you want to call Mr. Ridings?

5 MS. FIFE: I'm sorry, Your Honor. I think it might
6 be easier if I just proffer his testimony.

7 THE COURT: Is there any objection to proceeding by
8 means of proffer? Mr. Mindlin has -

9 MR. MINDLIN: I have no objection, Your Honor.

10 THE COURT: -- indicated by body language no, he has
11 no problem. The objectors don't object at least to this.

12 MS. FIFE: All right. Great. Thank you, Your Honor.
13 I offer the proffer of testimony that would be given by Mr.
14 Barry W. Ridings, the co-chairman of the restructuring group at
15 Lazard Freres & Co., LLC, investment banker to Lehman Brothers
16 Holdings Inc. and its affiliated debtors which I will refer to
17 as Lehman.

18 Mr. Ridings is present in the courtroom today and
19 pursuant to Federal Rule of Evidence 103(a)(2), this Court may
20 accept a proffer in lieu of his testimony. Mr. Ridings is
21 thoroughly familiar with the matters before the Court and, in
22 particular, the motion to establish bidding procedures and to
23 approve Lehman's proposed sale of its investment management
24 division, IMD.

25 If Mr. Ridings were called to testify in support of

1 the sale motion, his direct testimony would be as follows: Mr.
2 Ridings joined Lazard in July 1999 to co-head its restructuring
3 advisory practice. Mr. Ridings now serves as managing director
4 and vice chairman of the U.S. Investment Banking at Lazard. He
5 has a B.A. in religion from Colgate University and an M.B.A. in
6 finance from Cornell University. Mr. Ridings is licensed by
7 the NSD and the stock exchange with series 7, 63 and 24
8 licenses. Mr. Ridings has been involved in the restructuring
9 of troubled companies for over thirty years. From 1990 to
10 1999, Mr. Ridings was managing director of BT Alex. Brown in
11 its restructuring group. And before that, he was at Dreckville
12 (ph.). Since 1990, Lazard's professionals have been involved
13 in over 250 restructurings representing over 350 billion in-
14 debtor assets. Mr. Ridings has testified and has been
15 qualified as an expert in scores of large cases including Trump
16 Casinos, Macy's, Western Union, Owens Corning, Marble
17 Entertainment, Calpine, Sun Healthcare and Vlastic Foods. Mr.
18 Ridings has been involved in over a hundred debtor and creditor
19 assignments including both pre-petition and Chapter 11
20 restructurings domestically and internationally.

21 Mr. Ridings lectures extensively and is recognized as
22 an expert in connection with asset sales in and out of
23 bankruptcy. He is a fellow at the American College of
24 Bankruptcy and a member of the Institutional Insolvency
25 Institute. He teaches classes on valuation, MNA and

1 restructuring at Cornell's graduate school of business and New
2 York University Stern School of Business for the past fifteen
3 years.

4 Lazard was retained by Lehman in September 2008 to
5 act as its investment banker and provide advice regarding any
6 restructuring or sale transaction. In particular, Lazard and
7 Mr. Ridings were engaged with respect to the sale of the IMD
8 business. He would testify that he became familiar with
9 Lehman's businesses, with IMD business, in particular, and he
10 was involved in the negotiations of and has reviewed the terms
11 of the purchase agreement and bidding procedures negotiated
12 with Bain Capital Partners and Hellman & Friedman.

13 Mr. Ridings would testify that the extreme volatility
14 in the financial markets over the course of the past year has
15 resulted in negative consequences to Lehman and other similar
16 firms. He is aware that at the time of Lazard's engagement,
17 Lehman's management was exploring several different options to
18 deal with the deterioration of its business. In connection
19 with Lazard's engagement, he became aware that since June 2008,
20 Lehman's management had expensively explored the possibility of
21 a sale of a part or all of the IMD business. Mr. Ridings
22 reviewed the comprehensive marketing effort undertaken by
23 Lehman to obtain a binding agreement and he is familiar with
24 the four bids received by Lehman prior to the commencement of
25 the Chapter 11 case. Three of those bids were for fifty-five

1 percent of IMD and one was for a hundred percent of IMD.

2 Mr. Ridings would testify that uncertainty regarding
3 Lehman's stability since early September 2008 has affected and
4 continues to affect IMD's ability to maintain its clients,
5 employees and assets under management. Before Lehman could
6 consummate a sale, however, Lehman was forced to file Chapter
7 11 cases because its assets were rapidly deteriorating. Mr.
8 Ridings would testify that Bain and H&F were two parties very
9 advanced in their effort to conduct diligence and therefore the
10 debtors believed that Bain and F&M (sic) were most likely to
11 offer the highest or best value for IMD in the shortest period
12 of time.

13 On September 14th, therefore, Lehman encouraged Bain
14 and H&F to partner in making an offer for the IMD business.
15 Each would provide fifty percent of the funding required to
16 close the transaction. Excuse me. In the fourteen days
17 between Lehman's Chapter 11 filing and the signing of the
18 purchase agreement, the IMD business was extremely stressed.
19 The private investment management business, Lehman's high net
20 worth brokerage franchise, was under assault by competitors who
21 attacked aggressively offering substantial compensation and, in
22 one case, hosting open houses for Lehman's IMD employees. The
23 core of IMD, Neuberger Berman, was under stress especially as
24 clients and employees sought clarity with regard to the future
25 ownership structure. In the month of September alone, assets

1 under management were down approximately six percent due to
2 withdrawal. Clients and employees were concerned about being
3 part of a bankrupt Lehman Brothers and were looking for clarity
4 and stability as to the ownership. Mr. Ridings would testify
5 that following the commencement of the cases, Bain & H&F
6 actively continued their diligence of IMD businesses and
7 assets. The parties engaged in around-the-clock meetings and
8 negotiations over the course of the initial two weeks of these
9 cases until a purchase agreement was executed.

10 Mr. Ridings would testify that the debtors were
11 extremely motivated by the threatened and actual loss of
12 important clients and the corresponding erosion of value of the
13 IMD businesses. Lazard participated in the negotiation process
14 and many meetings with the various constituencies. Alvarez &
15 Marsal, like Lazard, approved the proposed auction process and
16 the purchase agreement ultimately agreed upon by Lehman, Bain
17 and H&F. Mr. Ridings would testify that these negotiations
18 were at arms' length, difficult, aggressively negotiated by the
19 parties and the bidding procedures and the purchase agreement
20 are the result of good faith negotiations.

21 Mr. Ridings would also testify that Lehman did not
22 rush into the purchase agreement. He would testify that the
23 sellers resisted urges to accept many proposals from Bain and
24 H&F that were materially worse for their estate even though the
25 value of IMD's assets were depreciating day by day.

1 Mr. Ridings would testify that pursuant to the
2 proposed bidding procedures, the diligence window and open
3 auction process will allow potential bidders to do their
4 diligence and to make an offer higher or better than the one
5 established by the purchase agreement. In fact, Mr. Ridings
6 would testify that the only way that those would agree to many
7 of the provisions was in the context that there would be a long
8 diligence and auction period during which all parties would
9 have the opportunity to consider bidding on the purchased
10 assets.

11 The sellers insisted on an open and fair process at
12 the same time having an executed purchase agreement satisfy the
13 immediate and pressing need to establish certainty with regard
14 to the future of IMD in order to preserve its values of going
15 concern. Mr. Ridings would testify that the sellers' entry
16 into the proposed purchase agreement had the effect of enabling
17 IMD to convince many clients and employees to remain with the
18 business until the conclusion of today's hearing. Mr. Ridings
19 believes that the bidding procedures are appropriate because
20 they provide a process where Lazard can run an auction with the
21 goal of maximizing recovery for the debtors and their
22 stakeholders.

23 It is clear that if the Court rejects the proposed
24 bidding procedures, Bain and H&F would be entitled to terminate
25 the purchase agreement. It is not clear that IMD would be able

1 to convince clients and key employees to stay with the sellers
2 and to enter into employment agreements.

3 Mr. Ridings would testify that the termination fee,
4 reimbursement amount, and other stalking horse protections,
5 particularly as they've been revised by the compromise with the
6 creditors' committee, are reasonable and they were heavily
7 negotiated and the amount set forth as revised were significant
8 concessions on the part of the purchaser that were required by
9 the sellers.

10 In these circumstances and given the condition of the
11 business and the time pressure that the sellers were facing,
12 the agreement represents the best the sellers could do.

13 In sum, Mr. Ridings would represent that the pending
14 transaction should be approved and the sale process allowed to
15 go forward.

16 THE COURT: Is there anyone who objects to receiving
17 the proffer as evidence or who wishes to examine Mr. Ridings in
18 cross-examination? I hear no objections. I accept the
19 proffer.

20 MS. FIFE: Oh, I'm sorry. I'm sorry. The debtors
21 rest, Your Honor.

22 THE COURT: All right. The evidence is in and
23 counsel for the committee is rising.

24 MR. ARONZON: Good evening, Your Honor. I'm Paul
25 Aronzon with Milbank Tweed.

1 THE COURT: Good evening.

2 MR. ARONZON: I don't want to elongate this hearing
3 but I wanted you to understand the thinking of the committee on
4 this '40 Act issue and I'll refer to it as the '40 Act issue.
5 That's how we see it. Look, we wanted a full and complete
6 auction. We hope that Carlyle bids. We want as many bidders
7 as we can get. We worked very hard over the last three and a
8 half weeks to try and ensure that we had a process and
9 procedures that would accommodate a bidding process that
10 invited people in. It was not simple. But I think we've
11 achieved that result here tonight especially with the
12 negotiations that occurred out in the hallway.

13 We had a number of issues. They got knocked down one
14 by one. This '40 Act issue was one of the things that was
15 left. We view the '40 Act issue as timing. We are concerned
16 about confusion as to customer and we thought long and hard
17 about it but on balance, we wanted a stalking horse. And we
18 wanted a bid announced with a stalking horse to stabilize this
19 business. We were sitting there watching the deterioration as
20 the contract negotiations were being dragged out and watching
21 customers leave and watching portfolio managers become upset
22 and threaten or actually leave. And so for us, it was real
23 time in balancing these problems.

24 We're prepared right now and I just said it to say
25 that these bidding procedures we think work. We'd like to get

1 on with the auction. We are mindful of the customer confusion
2 issue. We know there's a risk that people might leave. But we
3 know that this is not a lockup. We know it's not exclusive.
4 We know that whoever wins the auction can send out notices
5 again. And yes, people would be confused. I know when I get
6 things like this in the mail, I throw them out. I should
7 probably pay more attention to them. But I don't.

8 THE COURT: Probably should.

9 MR. ARONZON: Thank you, Your Honor.

10 THE COURT: Any other --

11 MR. ARONZON: Well --

12 THE COURT: Well --

13 MR. ARONZON: -- one more comment.

14 THE COURT: -- I was actually asking somebody else,
15 but you're certainly free to come back.

16 MR. ARONZON: I'm so sorry. Mr. Mindlin was asking
17 me before the hearing how we viewed -- how we would view
18 bidders, because we'll be sitting at the table, under our
19 arrangement, who have not started the consent process. And
20 because we view it as timing, I don't view it as a significant
21 leg up and neither does the committee. The whole committee's
22 been briefed on these issues, and they're well aware of them.

23 THE COURT: Okay. That's very helpful.

24 MR. MINDLIN: Thank you, Your Honor. Phil Mindlin,
25 Wachtel Lipton, for Carlyle. A couple of quick points. We've

1 heard it would cause a substantial amount of confusion if we
2 had to go out with a second round of consents. We've heard
3 that the consent process hasn't begun. We've heard it could
4 wait. We've heard, therefore, that it adds only a limited
5 amount of time to what is already a 90 to 120-day process,
6 depending whose account of it you go with. We've heard that
7 with institutional clients they're open to a re-renegotiation
8 of a contract. I've lived with this before. What happens is
9 that when you go to them and you say you want approval to sell
10 to Hellman & Friedman, Bain, they change some of the terms.
11 And then when you come back and ask for approval again, the
12 terms change again because it's somebody else's opportunity to
13 get a second bite at the apple.

14 So that leaves open in my mind why do it? One answer
15 is people are acting honorably. They raised their issues, they
16 got agreement on their issues and they don't want to, certainly
17 in any transparent way, abandon what they feel may be a
18 handshake. But this is a vitally important issue.

19 The reason that we have said Carlyle hopes to bid
20 better and hopes to be a high bidder is because we're not sure
21 we'd play in an auction that's stacked against us, and that's
22 how this auction looks to us. It really is an unfair process.
23 The bidder has said, Bain Group has said, and I can see it,
24 that they've added value by being the stalking horse. That's
25 why in this kind of process we have stalking horses. But

1 they're not altruists. The contract we started out with was,
2 frankly, egregious, and the contract that we ended up with was
3 better but way beyond the norm. The reality of this S&P
4 adjustment is it knocks 850 million off the purchase price, and
5 the purchase price was already a number that they expected
6 would be around a billion-six.

7 So if you really look at it, fifty million plus
8 expense reimbursement is against a purchase price that's
9 probably in the neighborhood of 850, 900, on their call. So
10 they're getting what's double the normal break fee for being
11 the stalking horse. So they're not altruists, and I wouldn't
12 expect them to be and I expect them to act in their own best
13 interests. But we shouldn't allow them to say, to threaten,
14 that they're going to pick up their toys and go away unless
15 they get something that in a fundamental way is inimical to the
16 notion of a bankruptcy auction: a fair process. That's why
17 people play in these auctions: because they know they're fair;
18 they know that when the gavel comes down it's theirs; they know
19 what the bidding increment is. To have a process like this
20 that starts out unfair is a disincentive for bidders to play.
21 It is certainly a disincentive for Carlyle to bid, and that's
22 why, Your Honor, all I can say is that I would hope for us to
23 be there. I can tell you that the process is a fair one, one
24 that starts out level, we're there. Thank you, Your Honor.

25 THE COURT: Thank you.

1 MR. BENNETT: Very briefly, Your Honor. Again, David
2 Bennett, Thompson & Knight, for Crossmark. Your Honor, we
3 raise two issues: jurisdiction and transparency. And I would
4 like to suggest a solution. As to jurisdiction, Your Honor, if
5 the debtor or an interested buyer is to exercise the bankruptcy
6 call, then the Court should require that that be done in
7 advance of the sale hearing with sufficient time to give
8 parties in interest notice, say thirty days, not three days.
9 Your Honor, this process should accommodate that at this point.
10 There's been no contention that that kind of notice would be
11 deleterious.

12 Your Honor, as to transparency, the bid that is on
13 the table should be disclosed to parties in interest, and the
14 allocation of the purchase price should be disclosed. There is
15 an allocation schedule somewhere for the bid, for the Bain bid,
16 and we'd like to have it disclosed to parties in interest.
17 They should be reasonably required to disclose what they're
18 paying, for which assets and how the twenty-three sellers are
19 to be impacted in the sales process. Likewise, a competing
20 bidder should be required in some similar fashion to disclose
21 what they're paying, for which assets, so that we can assess,
22 and others like us, the thousands and tens of thousands of
23 others like us, can assess the impact of this process on their
24 rights. Thank you, Your Honor.

25 THE COURT: Thank you.

1 MS. FIFE: I'd like to just briefly adjust the
2 objection of Crossmark, Your Honor, in response to that
3 argument. First of all, it's clear that Crossmark got notice,
4 so I'm somewhat surprised by the remarks of that, not getting
5 notice. What we intend to do is provide notice of the bidding
6 procedures and the sale to all creditors of LBHI, which I'm
7 told is about 300,000 parties. That also includes all of the
8 creditors of the subsidiaries, for the most part. So we're
9 pretty comfortable that they will have actual notice. In
10 addition, we're going to post it on the website. So I think
11 that actually all parties will have notice.

12 Also, there is no allocation schedule; it just hasn't
13 been done. I don't know what gives the attorney the impression
14 that one exists, but I haven't seen it and I'm fairly certain
15 that it just doesn't exist.

16 THE COURT: If it existed, would you have any
17 interest in sharing it?

18 MS. FIFE: No. No.

19 THE COURT: I didn't think so.

20 MS. FIFE: But it doesn't exist. We will allocate
21 the purchase price. I believe that we have to do it, and we
22 will do that, and that's the fair thing. And in light of all
23 of the discussions that we've had earlier today, that's
24 appropriate, and we intend to do that and Lazard will help us
25 with that. They will value the assets, and we will allocate

1 the purchase price accordingly, but haven't done that yet, and
2 that's certainly not a high priority.

3 What Crossmark has is a claim; they have a fifty
4 million dollar claim. And they'll be able to assert that claim
5 against the proceeds that will be left in that particular
6 entity after the allocation, and that's what they will get.
7 They'll get satisfied from that claim. And if they're a
8 bidder, they can bid as well. I mean, the auction -- the
9 bidding procedures permit parties to bid for individual assets,
10 and if they're interested in a particular asset they can bid
11 for that. So I think we really have satisfied all of the
12 issues that have been raised by Crossmark. Thank you, Your
13 Honor.

14 THE COURT: Okay. Is there anyone else?

15 MS. PIPER: Your Honor?

16 THE COURT: Well, I guess there is.

17 THE COURT: Hello. Who are you?

18 MS. PIPER: Katherine Piper from Steptoe & Johnson,
19 Your Honor, with respect to the limited objection of Korea
20 Investment & Securities Company and True Friend Forth
21 Securitization Specialty. I appreciate the late hour there and
22 will be very brief. I believe I heard counsel for the debtor
23 represent earlier that the assets that were the subject of our
24 limited objection are intended to be part of the sale, and we
25 appreciated that. We just wanted clarification on the record

1 that they're not subject to be added at a later date, and with
2 that clarification our objection will be resolved.

3 THE COURT: We'll see if we can get you that
4 clarification now.

5 MS. FIFE: I can clarify that those assets are not
6 part of the IMD business, so they will not be added to the
7 sale.

8 THE COURT: Okay.

9 MS. PIPER: Thank you, Your Honor.

10 THE COURT: Objection's withdrawn.

11 MS. PIPER: That does resolve our objection.

12 THE COURT: Fine.

13 MS. PIPER: May I be excused, Your Honor?

14 THE COURT: Yes.

15 MS. PIPER: Thank you.

16 MR. LOBELLO: Good evening, Your Honor. Edward
17 LoBello of Blank Rome, for Thomson Reuters. I just want to
18 touch on something Ms. Fife said earlier. We filed a limited
19 objection as well. I indicated to Ms. Fife that we were
20 withdrawing our objection based upon the omnibus reply that she
21 filed, and she reported that to the Court. She is correct. I
22 want it to be clear for the record, however, that our limited
23 objection also had a reservation of rights. I know Your Honor
24 is not fond of people taking the mike and indicating
25 reservations of rights, especially at the late hour, but I

1 wanted to make it very clear that we were withdrawing our
2 limited objection but the reservation of rights still stands.

3 THE COURT: It's fine, and I'm perfectly willing to
4 hear as many reservations of rights as people want to make.
5 It's part of the process. That's just not necessary but it's
6 expected, and that's fine.

7 MR. LOBELLO: Then, if I can, for thirty seconds,
8 given the hour, Your Honor --

9 THE COURT: Really? You're going to add something
10 now?

11 MR. LOBELLO: Just thirty seconds, Your Honor,
12 because I've not stood up to do this before and I know other
13 parties have. Your Honor, we have a series of executory
14 contracts with the debtors. We have worked in cooperation with
15 Barclays with respect to its acquisition in terms of providing
16 critical services to provide the continuity that the business
17 requires. It is our intent, if our contracts are implicated by
18 this transaction, to try to work cooperatively with the buyer
19 of these assets. That is our intent; that is our approach.

20 Having said that, Judge, we do reserve our rights
21 under 365 to assert that our contracts are integrated
22 agreements that must be assumed in their entirety and also to
23 assert that our contracts have already been assumed and
24 assigned to Barclays, because that's what appears to have
25 happened. Having said that, Your Honor, we will work

1 cooperatively through the process. Thank you.

2 THE COURT: Your rights are reserved.

3 MR. LOBELLO: Thank you.

4 THE COURT: Everybody's rights are reserved.

5 MR. KENT: Good evening, Your Honor. Thomas Kent
6 from Paul Hastings. We have not filed an objection. I
7 represent landlord Fischer Brothers, whose lease may be assumed
8 as part of this transaction. I have not filed an objection but
9 I wanted just a point of clarification with respect to
10 something that was said respecting shortening the auction
11 period to forty-five days and perhaps having the hearing to
12 approve the sale sixty days from now. There is a timeline in
13 the existing contract for parties to get notice of contracts or
14 leases being assumed, and I'm wondering whether if the time
15 period from what was sent out previously from the expected
16 hearing and the time period that people would have notice,
17 whether that'll also get backed up. I want to be sure that
18 that gets enough notice so people like my client have
19 sufficient time to review the fact that their contracts are
20 being assumed and they have an ample opportunity to review
21 adequate assurance of future performance with respect to
22 whoever it is that's going to assume the contract.

23 So I don't know whether now is the time you're going
24 to actually set the dates for this but I just want to be sure
25 that there's plenty of time for that in the order that you're

1 going to sign, as I assume you may be signing, with respect to
2 the bidding procedures.

3 THE COURT: Do you wish to comment on that?

4 MS. FIFE: Just to say that we intend to change all
5 of the dates.

6 THE COURT: Okay. The dates will be adjusted to
7 reflect the new timeline.

8 MR. BROMLEY: Your Honor --

9 THE COURT: I think I better rule quickly and that'll
10 stop this. What do you have to say, Mr. Bromley?

11 MR. BROMLEY: I don't have any leases to deal with,
12 Your Honor. Very quickly, Your Honor, the bidders, Bain,
13 Capital and Hellman & Friedman, have, as the testimony has
14 shown, been a substantial stabilizing influence on these
15 businesses. I think it's also clear that the absence of a deal
16 would be destabilizing. The issues that have been raised more
17 focus on information, the confusion that may result from a lack
18 of information, and certainly seem to be able to be cured quite
19 easily by having adequate information provided.

20 What we're talking about here, Your Honor, is looking
21 to have this business healthy. We don't want to exercise
22 rights with respect to purchase price adjustments. We want
23 this business as healthy as possible and to buy it as quickly
24 as possible. And when taking into account Mr. Mindlin's views,
25 Your Honor, again, I just reiterate what we're talking about

1 here is a free option for someone who hasn't done anything and
2 has made no promises. Thank you, Your Honor.

3 THE COURT: Is there anyone in the courtroom or on
4 the telephone who wishes to say anything more at this point?
5 Okay. I've given careful consideration to the objections that
6 remain outstanding, but before addressing those objections, I'd
7 like to comment generally on the improved terms and conditions
8 of the bid procedures that resulted from the discussions that
9 took place during the break. I believe that the adjustments
10 that were described on the record reflect a significant
11 enhancement in those bid procedures in any number of respects,
12 and I don't need to repeat them now. It's manifest to me that
13 the lowering of the breakup fee, the clarification that the
14 expense reimbursement is for actual expenses, the lowering of
15 the bid increments and other similar adjustments, in
16 combination, make these bid procedures acceptable from my
17 perspective. I would note that they might not have been
18 acceptable absent these adjustments.

19 As for the issues raised by the remaining objections,
20 I have a lingering concern with respect to the consent process
21 that we have spent so much time discussing this evening. I
22 believe that the testimony of Neuberger Berman's general
23 counsel makes it clear that the business of the IMD group, not
24 just of Neuberger Berman, is a fragile enterprise predicated,
25 to a large extent, on the skills of the people who work within

1 the group and their relationships with their clients.

2 I take it as a given that the Lehman bankruptcy on
3 September 15 was a huge shock to the system and that keeping
4 this transaction, as it has been proposed, in place and
5 allowing this transaction to proceed in the manner that has
6 been proposed tonight represent the principal stabilizing force
7 for that business. That, however, is not the issue before me.
8 The issue before me is whether the bid procedures are fair and
9 should be approved as a matter of established bankruptcy law.
10 Ordinarily, it wouldn't be appropriate to approve bid
11 procedures that, taken as a whole, would offer disincentives,
12 material disincentives, to prospective bidders. Ordinarily,
13 this comes up in the context of breakup fees or overbid
14 requirements, matters that go to the economics of entering the
15 auction process, and the case law is fairly clear, not that we
16 deal with percentages; we deal with the structures of
17 transactions that either are suitable to encourage bidding or
18 are designed to frustrate bidding and as a form of exclusivity.
19 That's the reason that Courts, in this circuit and elsewhere,
20 tend to focus on whether or not the breakup fee is within
21 market or is excessive relative to market.

22 Here, I think the adjustments that have been made to
23 the proposed bid procedures go a long way toward taking the
24 sting out of what had been fairly onerous overbid and breakup
25 and expense reimbursement requirements. As has been apparent

1 from the colloquy and the presentation of evidence, I have
2 taken Mr. Mindlin's observations regarding the consent process
3 and I have run with that in my own direction. Notwithstanding
4 that, I believe that there's now alternative at this point for
5 these debtors other than to accept the condition to the
6 transaction which has been imposed by the stalking horse
7 bidder, Bain and H&F, that they be afforded the opportunity to
8 initiate the consent process. In accepting this condition, I
9 am comforted to some extent by the comments of committee
10 counsel indicating that this issue has been vetted within the
11 committee, considered by the committee's professionals. And
12 while not optimal from the perspective of encouraging
13 sophisticated parties to come to the table, the issue does not
14 represent an impermissible lock-up.

15 The practical reality, however, may be different. I
16 believe the testimony of counsel for Neuberger Berman makes it
17 evident that the consent process is something that, in
18 practical terms, can really only be done once. There would
19 have to be a remarkably better bid to encourage the debtors and
20 the committee in consultation with the debtors to assume the
21 risk that a resolicitation of these various consents would be a
22 risk worth taking, although it's possible that some third
23 party, Carlyle included, could come in with a bid that doesn't
24 include the kinds of purchase price adjustments and other
25 unattractive features of the current bid that would make for a

1 tough business decision, and I hope that happens. Ultimately,
2 this is about dollars.

3 A contingent "I might bid" argument balanced against
4 a fully committed transaction with a party that's prepared to
5 move forward and which does provide material stabilizing
6 benefits to the enterprise makes for an easy call, for me,
7 although it would be a much easier call indeed if the consent
8 process were delayed. What has not effectively been presented
9 to me this evening is why it is essential, from the perspective
10 of Bain and H&F as purchasers, to insist that the consent
11 solicitation be initiated immediately. Candidly, I view it as
12 their way of making it that much more likely that they are the
13 only game in town. For that reason, this transaction, from my
14 perspective, appears to be a private sale masquerading as a
15 public one and looks more like ego energy than anything else
16 I've seen tonight.

17 But that was also true of the Barclays transaction.
18 We've talked throughout the day about how extraordinary and
19 exception the Lehman case is. It's exceptional in some ways
20 that I don't particularly like; this is one of them. But I'm
21 also a realist. The transaction as is, as adjusted through the
22 efforts of lawyers for the debtors and the objectors,
23 represents the only transaction currently available for the IMD
24 platform and, as structured, does not foreclose the possibility
25 of other bids.

1 Now, as for the objections raised by Crossroads, both
2 with respect to transparency and jurisdiction, I find neither
3 of those objections compelling. As to transparency, that's the
4 theme of the day. Over time, there will be increasing
5 transparency in this case. And as to the sale of the IMD
6 businesses, this particular objection really isn't interested
7 in anything other than its parochial interests in one
8 particular part of the whole. I believe that, as a result,
9 Crossroads probably knows everything it needs to know about the
10 assets it might be interested in buying.

11 As to jurisdiction, I think that's a pure red
12 herring. I will not be approving a sale of any nondebtor
13 assets; everyone knows that. That's the reason for the
14 somewhat unconventional provision of what I've termed "a call"
15 on certain possible bankruptcy filings that will be at the
16 behest of the purchaser. If those filings take place, I will
17 have jurisdiction. If those filings take places, parties in
18 interest in those particular cases will have notice. Even if
19 those filings don't take place, everyone within a reasonable
20 level of commercial curiosity has notice. Accordingly, I
21 overrule those objections.

22 And as for the Carlyle objection, we never did get to
23 the question of standing, but it doesn't matter. I believe
24 that the objections were thoughtful, helpful and provocative.

25 That's my ruling. I'll take an order once one is

1 modified according to the adjustments described on the record.

2 MR. MILLER: Thank you, Your Honor.

3 THE COURT: I think if there's nothing more --

4 MR. MILLER: Your Honor, there's just one more.

5 THE COURT: Is there more?

6 MR. MILLER: One more item. Your Honor asked for a
7 report in connection with the Barclays sale on the assumption
8 of executory contracts and unexpired leases as to the cure
9 amounts. I believe we have a report on that, Your Honor, from
10 Cleary Gottlieb.

11 MS. GRANFIELD: What I would suggest, Your Honor, in
12 view of the lateness of the hour is just simply that we are in
13 the process. We apologize that because thousands of contracts
14 are being assumed and assigned that there are a number of curer
15 objections that had been filed. We're working through that
16 process and that what I would suggest is that we give you kind
17 of chapter and verse maybe at the November 5th hearing, if that
18 is acceptable. We were prepared to do that but I just think --
19 we're working through, trying to do it at a business level, to
20 begin with, and we will give you chapter and verse on November
21 5th.

22 THE COURT: That's fine. If there's nothing more,
23 we're adjourned. Thank you.

24 (Whereupon these proceedings were concluded at 8:09 p.m.)
25

I N D E X

T E S T I M O N Y

John Bluagr Ms. Fife 146

John Bluagr Mr. Bromley 154

E X H I B I T S

PARTY	NO.	DESCRIPTION	ID.	EVID.
Debtors'	1	Schedule to asset purchase agreement of client consent process	96	15

R U L I N G S

DESCRIPTION	PAGE	LINE
Joint administration motion for Chapter 11 cases that were filed on 10/3 and 10/5 granted	85	7
Motion for order directing that certain orders and other pleadings entered or filed in the Chapter 11cases of affiliated debtors be made applicable to recently file cases granted	85	16

I N D E X, cont'd

R U L I N G S

DESCRIPTION	PAGE	LINE
Motions by debtors to approve retention, engagement of Weil, Gotshal as general counsel; Curtis, Mallet as conflicts counsel and to engage Alvarez & Marsal as interim retention orders approved	86	20
Utilities motion approved	87	19
Motion of Shinsei Bank, Ltd. for entry of order approving specified information blocking procedures and permitting trading of claims against debtor upon establishment of a screening wall granted	88	14
Motion of Metropolitan Life Insurance Company for entry of order approving specified information blocking procedures and permitting trading of claims against debtor upon establishment of a screening wall granted	88	20

I N D E X, cont'd

R U L I N G S

DESCRIPTION	PAGE	LINE
Motion of AEGON USA Investment Management, LLC for entry of order approving specified information blocking procedures and permitting trading of claims against debtor upon establishment of a screening wall granted	89	4
Motion of William Kuntz for relief from stay for an order lifting or modifying the automatic stay denied	92	23
Motion for appointment of equity committee denied without prejudice	102	10
Crossroads' objections as to transparency and jurisdiction overruled	106	15
Eagle transaction granted	123	13

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I N D E X, cont'd

R U L I N G S

DESCRIPTION	PAGE	LINE
Newport Global Opportunities Fund LP Rule 2004	178	5
motion denied		

C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a true and accurate record of the proceedings.

LISA BAR-LEIB

Veritext LLC

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Mineola, NY 11501

Date: October 21, 2008